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REVIEW OF THE U.S. DEPARTMENT OF AGRICULTURE'S CROP DISASTER ASSISTANCE AND 1993 CROP QUALITY ISSUES

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HARRING

BEFORE THE

SUBCOMMITTEE ON GENERAL  
FARM COMMODITIES

OF THE

COMMITTEE ON AGRICULTURE  
HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRD CONGRESS

FIRST SESSION

SEPTEMBER 28, 1993

Serial No. 103-37



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# REVIEW OF THE U.S. DEPARTMENT OF AGRICULTURE'S CROP DISASTER ASSISTANCE AND 1993 CROP QUALITY ISSUES

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TUESDAY, SEPTEMBER 28, 1993

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON GENERAL FARM COMMODITIES,  
COMMITTEE ON AGRICULTURE,  
*Washington, DC.*

The subcommittee met, pursuant to call, at 10:15 a.m., in room 1302, Longworth House Office Building, Hon. Tim Johnson (chairman of the subcommittee) presiding.

Present: Representatives Peterson, Volkmer, Long, Minge, Pomeroy, English, Stenholm, Condit, Barlow, Bishop, Williams, Emerson, Smith of Oregon, Barrett, and Nussle.

Staff present: Dale Moore, minority legislative coordinator; Glenda L. Temple, clerk; Anne Simmons, Anne C. Kennedy, Merv Yetley, and Neil P. Moseman.

## OPENING STATEMENT OF HON. TIM JOHNSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF SOUTH DAKOTA

Mr. JOHNSON. We will commence this hearing of the General Farm Commodities Subcommittee on the review of Department of Agriculture's crop disaster assistance and 1993 crop quality issues.

It is my understanding that the ranking minority member, Mr. Emerson, is tied up on the floor a bit, he is on his way, but that we should go ahead and proceed to expedite handling of this hearing.

I do not need to remind anyone of the terrible weather conditions that have affected agriculture throughout the country this year.

The excessive rainfall and river flooding that hampered planting late this spring, and the cool, wet conditions that prevented proper plant development and fostered disease problems. And last, but certainly not least, the overflow of the Mississippi and Missouri Rivers and their tributaries stood in stark contrast to the drought that faced much of the Southeast.

While the disaster assistance that Congress provided will help to keep people going a while longer, it is going to be a long couple of years as the recovery continues.

I am also concerned about the ability of the affected land and soil to come back from this devastation. Obviously, the reports that it could be anywhere from 2 to 5 years before the soil returns to preflood growing conditions should be a concern to all of us. I hope that our land-grant system and the USDA can pull together to help



provide information to producers on what can be done in this regard as well.

I called this hearing today to go over where we stand in regard to the disaster assistance program and the administration of the regular commodity programs.

Killing frosts have already occurred in scattered areas of the Midwest, and this adds to the concerns and confusion among producers.

Those of us from the Spring Wheat area have an added concern about the occurrence of vomitoxin in the wheat harvest. Lack of knowledge about this particular mycotoxin forced producers without on-farm storage to dump their wheat and accept whatever discounts the market was imposing.

While the involved agencies have acted to help calm the market and update the acceptable levels, I am concerned about the length of time it took for action to take place. It seems that we were able to react much more quickly in regard to the incidences of aflatoxin that have been seen in some early corn harvests.

With that, I will open the floor to any opening statements that my colleagues might have. The gentleman from Iowa.

#### **OPENING STATEMENT OF HON. JIM NUSSLE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IOWA**

Mr. NUSSLE. Thank you, Mr. Chairman.

Mr. Chairman, I want to thank you for calling this hearing today. Even though the water has receded, as you quite properly stated, somewhat in the Midwest, an early frost is expected this week in my State in Iowa. And I say early because our average is about October 7, so you can see what kind of predicament we are in. So, unfortunately, the real damage of the floods this summer is really just beginning to hit farmers.

I would like to thank the USDA, and I would like to pay a special commendation to Secretary Mike Espy for the flexibility that you have provided farmers this summer and so far this fall. I have received assurances from Secretary Espy that the USDA is willing to help farmers throughout this long haul, and I have no doubt that the USDA will continue with that effort.

I might also express my gratitude to the ASCS Acting Director, Randy Weber. I want to thank him for his quick and responsive action. Mr. Weber has spent, if I am not mistaken, 2 full days in Iowa listening to farmers; and for that, we are very grateful.

Iowa's farmers are weather weary. While the USDA has already given significant help to flood stricken farmers in the Midwest, farmers need additional flexibility from the USDA.

I have been speaking with farmers all over the Second Congressional District of Iowa, and they have been telling me that they need better loans, extending deadlines, and help with their losses.

So today I would like the USDA to consider a list of three things that may be helpful: To renew the recourse loan policy, which will allow loans for weather-damaged corn, of which we will have quite a bit this year; to extend the CRP program, and to allow the recently opened acres in Iowa and other areas for hay and grazing to be extended because, quite honestly, they haven't been able to get into the fields, haven't been able to get into those areas because



of the weather; and defined quality losses would be the third, which is a program Congress appropriated funds for earlier this summer but thus far has not been clearly defined. And we have a lot of questions of what exactly a quality loss is.

There are no magic formulas of what will help farmers through this difficult fall and harvest. However, I think flexibility through what we do in Washington through the agencies and Departments that are there to help I think is one of the best ways that we can give some assistance during this period of time.

I might also add as a sidenote, one of the farmers this last weekend I was visiting with knew that the frost was coming and mentioned that there may be something that Congress could do about the frost.

He said, with all the hot air in Washington, why don't they move out to Iowa for a week and that may put us off for a week. But barring that as a fourth alternative and understanding the frustration that is out there, I appreciate the opportunity to go over some of these flexible things that can be done in lieu of a large overhaul.

I thank the chairman for calling this hearing.

Mr. JOHNSON. The gentleman from Minnesota.

#### **OPENING STATEMENT OF HON. COLLIN C. PETERSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MINNESOTA**

Mr. PETERSON. Thank you, Mr. Chairman.

I, too, want to thank you for calling this hearing. In our area, we were looking at one of the better crops that we have ever seen; and for awhile we were looking like we maybe were going to avoid this disaster. But I think, in the end, we probably ended up worse off than a lot of the rest of the country. We still have a lot of my farmers that can't get in their fields. We have been hit by this vomitoxin problem; and to say that farmers are frustrated is an understatement.

I think it is important that we take a look at where we are at. I want to thank the Department for trying to deal with this problem. They have been most cooperative and I think have honestly tried to address all of the issues as they come up.

But frankly, I think the disaster program, in spite of the fact that it has been improved, is inadequate. The Federal crop insurance program is inadequate. And if we don't learn anything else from the situation we have just been through, it should be that we have to fix Federal crop insurance and we have to quit having these disaster bills because it just doesn't work, and it doesn't make a whole lot of sense.

So I hope we can learn something from this hearing today, and I hope that we can fix the Federal crop insurance and never have to go through a situation such as we have had again.

Thank you.

Mr. JOHNSON. The gentleman from Oregon.

Mr. SMITH of Oregon. No statement, Mr. Chairman.

Mr. JOHNSON. And the gentleman from Georgia, Mr. Bishop.

**OPENING STATEMENT OF HON. SANFORD D. BISHOP, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF GEORGIA**

Mr. BISHOP. Thank you very much, Mr. Chairman. Let me add my voice to those who applaud the timeliness of this hearing. There are some problems that exist in Georgia concerning the disaster relief program; but before we get into that, following with Mr. Weber's testimony, I would like to take this opportunity to thank Secretary Espy, Mr. Weber, ASCS, for the tremendous job that has been done by the Department to assist farmers in Georgia and throughout the country.

Of course we had the floods, we had precipitation in Georgia in the spring, and we had drought this summer; and our farmers have really suffered tremendously. And we are just most appreciative for the Secretary's visit last month. We are very appreciative for the timeliness in which the disaster claims were processed and the turnaround time for the delivery of checks, well within the 2-week target that the Secretary had placed on the Department. And Georgia farmers are very pleased.

But at the appropriate time following Mr. Weber's testimony, I would like to raise some questions that have arisen as a result of some of the peanut claims, as well as some of the cotton claims, that have arisen from the Georgia farmers.

With that, Mr. Chairman, I would just like to thank you.

Mr. JOHNSON. The gentleman from North Dakota, does he have any opening remarks?

**OPENING STATEMENT OF HON. EARL POMEROY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH DAKOTA**

Mr. POMEROY. Mr. Chairman, I appreciate you holding this hearing. I think it is extremely important that we look at the issues to be covered in the course of this hearing.

I want to express my appreciation to the USDA representatives that are here, particularly those from the ASCS.

We have had concerns that the disaster compensation accounted, perhaps, for diminished bushel output but did not adequately compensate for the quality discounts taken by producers on the bushels they were actually able to bring in.

Earlier versions of the loss adjustment formulas I found as mystifying as anything since college calculus. I think that they have continued to work away at it; and, in fact, I guess just this morning we will learn of their latest revised loss adjustment formula, which I think is one that will make some sense to the farmers working with ASCS to determine loss adjustments.

It is in this area that I think their work was so important. The Secretary has been in this room talking about working for a farmer-friendly USDA. In the course of this disaster, we have seen questions raised in terms of the adequacy of disaster loss procedures. Looks like things are a little better than I thought they were even a week ago, Mr. Chairman.

I will be listening with great interest on these topics this morning. Thank you.

Mr. JOHNSON. The gentleman from Nebraska, Mr. Barrett, any opening remarks?

Mr. BARRETT. Thank you, Mr. Chairman. I want to take a moment to welcome a friend of mine personally and a friend of this subcommittee's, Mr. John Campbell from Omaha, now with Agricultural Processing and at one time was Under Secretary of USDA and a gentleman who is certainly no stranger to this subcommittee.

Welcome, John. I look forward to the testimony not only of this panel but other panels.

Thank you, Mr. Chairman.

Mr. JOHNSON. The gentleman from Texas, Mr. Stenholm.

[No response.]

Mr. JOHNSON. The gentleman from Missouri, Mr. Volkmer.

**OPENING STATEMENT OF HON. HAROLD L. VOLKMER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSOURI**

Mr. VOLKMER. Thank you, Mr. Chairman. I appreciate your calling this hearing at this time, as one who has had thousands of acres flooded not only from the Missouri and Mississippi Rivers in my district but also from tributaries and from flash flooding due to the heavy rains.

In fact, one of them just occurred last week. Questions are going to be asked because some of my farmers out there who want to repair land damaged from flooding are now being told by Connie Elson they are not eligible for ECP; and we are going to, I hope, today, get some better answers than my farmers have been getting, and so we can get this work done.

Hopefully those crops, they didn't get this year, maybe we can get one in next year. We have a long way to go before we get there. We have levees that have to be repaired, and can't be repaired, because we have water going in again.

So I want you gentlemen who are going to be testifying here—I hope this subcommittee will be a little sympathetic to our plight out there. It is not normal in any sense.

So I thank the chairman for this hearing.

Mr. JOHNSON. The gentleman from Minnesota, Mr. Minge, do you have an opening statement?

**OPENING STATEMENT OF HON. DAVID MINGE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MINNESOTA**

Mr. MINGE. Thank you, Mr. Chairman.

The moisture and crop loss problems that we have experienced, of course, are dramatic as everyone knows; and there are several things which I hope that the witnesses can devote some time to.

First of all, Federal crop insurance has been the disaster program of choice, and we have had a great deal of difficulty both here in Congress and within the Federal Crop Insurance Corporation in putting into place a policy, at a premium rate, that has attracted the type of usage that we ought to have. And a variety of reforms are now actively under consideration and, I believe, are being proposed or are about to be proposed by the administration.

I am very concerned that we have used the disaster program with disaster payments as a way to deal with the 1993 losses and we have not, in any way, improved the Federal crop insurance pol-

icy, at least not to date. And I am concerned about two issues there.

First of all, why is it that the policy provisions were not modified for, or exceptions allowed, during the course of the 1993 disaster program?

And second, is there going to be any problem in getting a new policy in place for 1994 so we don't have a repeat, if we do have a disaster again in 1994?

The 0/92 has been very awkward; and I don't think I need to belabor that because I know that many of you have struggled with how to implement 0/92 this year. And I am interested in your comments in that regard.

A third issue of concern to me is the farmer unemployment benefit program. And I recognize this may be outside the scope of some of the activities that the witnesses that we have normally dealt with; but if you have any insights or observations on that, I would be interested in hearing them.

I look forward very much to your comments, and I would also like to express my appreciation to the USDA officials that have been involved in the disaster program. I think they have gone the extra mile in trying to make the program work in 1993. I know that many farmers have had questions answered and feel that they have been listened to, even though sometimes we have not had all of the provisions changed the way we would like.

Still, we appreciate the openness and accessibility that you have provided us in connection with the administration of the program.

Mr. JOHNSON. The gentleman from California, Mr. Condit, do you have an opening statement?

Mr. CONDIT. No, sir.

Mr. JOHNSON. With that, we will call the first panel, which is Mr. Bruce R. Weber, who is the Acting Administrator of the Agricultural Stabilization and Conservation Service of USDA. He is accompanied by Ms. Wilda Martinez, who is Associate Deputy Administrator of Agricultural Products and Human Nutrition Services of the USDA; Mr. Timothy B. Witt, who is Assistant Manager for Research and Development, Federal Crop Insurance Corporation; and Mr. David Shipman, who is Director, Field Management Division of the Federal Grain Inspection Service.

We, as an aside to the members of this subcommittee, are not going to be discussing crop insurance in great depth since that is under Mr. English's subcommittee.

However, Federal crop is here today to answer technical questions about how they are interacting with ASCS programs. So I would hope that you would keep that caveat in mind as we go through your questions of the panel members.

Welcome, Mr. Weber, Ms. Martinez, Mr. Witt, and Mr. Shipman. And, as ever, your full statement is accepted on the record of this subcommittee; and if you choose to summarize your statement or in any other way abbreviate it, feel welcome to do so. But handle this in a manner you are most comfortable.

And we are anxious to hear from you, Mr. Weber.



STATEMENT OF BRUCE R. WEBER, ACTING ADMINISTRATOR, AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE, U.S. DEPARTMENT OF AGRICULTURE, ACCOMPANIED BY WILDA H. MARTINEZ, ASSOCIATE DEPUTY ADMINISTRATOR, AGRICULTURAL PRODUCTS AND HUMAN NUTRITION SCIENCES, AGRICULTURAL RESEARCH SERVICE; TIMOTHY B. WITT, ASSISTANT MANAGER, RESEARCH AND DEVELOPMENT, FEDERAL CROP INSURANCE CORPORATION; AND DAVID SHIPMAN, DIRECTOR, FIELD MANAGEMENT DIVISION, FEDERAL GRAIN INSPECTION SERVICE

Mr. WEBER. Thank you, Mr. Chairman, and I appreciate the kind comments of the other members.

Mr. Chairman and members of the subcommittee, I am happy to be here with you today to give a general overview of the 1993 disaster program, with specific emphasis on quality issues.

The 1993 disaster program was recently mandated by Public Law 103-75. ASCS began accepting applications on July 22, and the application period will end March 4, 1994.

The current program operates much like the previous disaster programs: If you have crop insurance, you must have a loss greater than 35 percent—40 percent without crop insurance—program and nonprogram crops are included; and payments per person are limited to \$100,000.

One of the big differences in the 1993 disaster program is the fact that quality losses are covered for major crops, program and nonprogram alike. The Department has taken steps to assist producers suffering from other quality-related problems brought about by this year's unusual weather.

Several States have reported the incidence of vomitoxin which thrives under cool, wet conditions and causes a disease in wheat commonly known as pink scab. The FDA has recently announced advisory levels for wheat containing vomitoxin.

Ordinarily, CCC does not allow contaminated grain to be pledged as collateral for a price support loan. However, as an aid to affected producers, we have decided that wheat and barley that is otherwise eligible to be pledged as collateral for a price support loan but contains vomitoxin may be pledged as collateral for a nonrecourse loan if the level of vomitoxin is five parts per million or less and, as a recourse loan, at a reduced rate if the level is greater than five parts per million.

The loan rate is not reduced for cases where the level of vomitoxin is less than five, but it is reduced by 30 percent where the levels are above 5 percent.

The unprecedented rain and flooding in the Midwest and drought in the Southeast has brought about untold devastation for the affected producers. I have personally witnessed the devastation firsthand in my five visits to the Midwest and to the Southeast.

USDA has made, and will continue to make, every effort to use our discretionary authority to ease the financial burden these disasters have brought about.

As stipulated by Secretary Espy, all eligible disaster assistance claims will be paid, and are being paid, within 2 weeks of the time producers have their applications approved. As of September 26,

disaster payments totaling \$56.4 million have been paid on 1993 disaster claims to just under 11,000 producers.

This concludes my statement, Mr. Chairman. And we will be happy to answer any questions that you have.

[The prepared statement of Mr. Weber appears at the conclusion of the hearing.]

Mr. JOHNSON. Thank you, Mr. Weber.

If a producer puts his wheat acres into 0/92 with the intention of planting minor oilseeds but is prevented from planting those oilseeds or they fail, is it true, then, that the producer is not eligible for disaster assistance on those oilseeds?

Mr. WEBER. If he is also earning disaster payments on wheat, that is true, yes.

Mr. JOHNSON. I have heard from a number of producers who feel that they are being penalized on their soybean acreage because of the use of previous planting history. And I would wonder if you could explain to me how you determine acreage for soybean producers who traditionally have a corn and soybean rotation.

Mr. WEBER. We normally determine that history based on the reports of the producers. For the most part, most producers do report their acreage on an annual basis, so we generally have their historical plantings.

Mr. JOHNSON. It is my understanding that producers who intended to plant additional acres of soybeans this year and have—even if they have the verification of their intent such as records of seed purchased and forward contracts and so on can't use that intent as part of the basis for determining their soybean acreage.

Mr. WEBER. Granted, I understand that happening; however, the statute does provide a specific formula for which we determine prevented planted acreage. And it is based on either the previous year's plantings or the average of the previous 3 years. And if the producer was planning to plant greater than those levels, we don't have the statutory authority to consider that.

Mr. JOHNSON. And that is a statutory——

Mr. WEBER. That is a statutory prohibition, yes.

Mr. JOHNSON. All right.

Are final 1993 wheat deficiency payment calculations going to reflect the discounts to prices received as well as the nonmilling or unfarmed use that may have happened?

It is my understanding that you utilize surveys to determine market prices. And I would hope you would find some way to measure the unusual circumstances encountered by producers this season.

Mr. WEBER. To the extent that producers have received lower prices, especially in those areas hurt with the disasters, those will be reflected in the national average price; and so we expect the overall price to be less.

Certainly with regard to an individual producer, that price is going to be much lower. However, again by statute, we determine the deficiency payments based on a national average price.

Mr. JOHNSON. I know that you offered recourse loans to wheat producers who have vomitoxin in their wheat, and I am wondering if recourse loans will also be available to corn producers this fall

if they find themselves with low quality corn that doesn't meet the requirements for nonrecourse loans.

Mr. WEBER. Yes, they will.

Mr. JOHNSON. In counties where crop insurance is not available for corn as grain but only for silage, I am hearing reports that ASCS is following the line of the FCIC in penalizing producers in these counties by counting any possible silage value against a producer.

And the question would be: Why should a producer that has no livestock and whose neighbors who do have their hands full of enough silage—in other words, there is no market—why should he be penalized for the silage value of that crop?

Mr. WEBER. Mr. Chairman, I can't give you an answer on that right now. I will have to get back to you on that issue.

Mr. JOHNSON. I would very much appreciate a response to that. [The information follows:]

Corn is appraised for disaster purposes based on the intended use reported to ASCS. Those acreages reported as corn for grain are appraised based on a grain value. Acreage reported as intended for silage are appraised based on silage value. It is our understanding that crop insurance is available for corn as grain in all counties.

Mr. JOHNSON. The law contains a waiver provision for the crop insurance purchase requirement. And I would wonder, is this being uniformly administered throughout the country?

There have been some reports that there was not a uniform administration of this waiver in appealed decisions in some previous years.

Mr. WEBER. We are hopeful that it is being administered equitably throughout the United States.

If it is not, we would appreciate knowing those instances so we can correct them.

Mr. JOHNSON. And I would ask you: Do you know how many projects are being undertaken under the emergency conservation program as a result of damage from this year's floods?

There is some concern that, in particular, the small watershed program is being utilized while the ECP is not.

Mr. WEBER. I can't give you a definite answer on that, but certainly we will look into it.

Mr. JOHNSON. I appreciate whatever response you might be able to provide to that.

[The information follows:]



- Q. MR. JOHNSON. And I would ask you: Do you know how many projects are being undertaken under the Emergency Conservation Program as a result of damage from this year's floods?

There is some concern that, in particular, the small watershed program is being utilized while the ECP is not.

- A. The following amounts have been allocated to the States from the \$30 million available for the midwest flooding:

States	Amount Allocated	Number of Counties Approved
Illinois	\$ 3,675,900	21
Iowa	5,922,900	73
Kansas	5,635,200	26
Minnesota	823,200	13
Missouri	6,964,800	61
Nebraska	1,528,200	7
North Dakota	12,000	4
South Dakota	1,200,000	37
Total . . . . .	\$25,762,200	242

At the present time, we have no way of knowing the number of projects that will be undertaken with Emergency Conservation Program funds. County offices are still processing individual farmer requests. This information will not be available until all requests have been received and reviewed by the applicable County Committees.

Mr. JOHNSON. And I would ask the members of the subcommittee to try to abide by the 5-minute rule. We have a number of members of the panel here; and in order to expedite things, I would ask you to follow the 5-minute rule.

So Mr. EMERSON, any questions that you might have?

Mr. EMERSON. Mr. Chairman, I have a statement I would like to submit for the record.

Mr. JOHNSON. Without objection.

[The prepared statement of Mr. Emerson follows:]

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ANNE SIMMONS  
STAFF DIRECTOR

**U.S. House of Representatives  
Committee on Agriculture  
Subcommittee on General Farm  
Commodities**

**Room 1301, Longworth House Office Building  
Washington, DC 20515**

**Statement of Congressman Bill Emerson  
Before the House Agriculture  
General Farm Commodities Subcommittee  
September 28, 1993**

BILL EMERSON, MISSOURI  
RANKING MEMBER  
ROBERT F. (BOB) SMITH, OREGON  
LARRY COMBEST, TEXAS  
BILL BARRETT, NEBRASKA  
JIM RUSSELL, IOWA  
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THOMAS W. EWING, ILLINOIS  
JOHN T. DOOLITTLE, CALIFORNIA  
JAY DICKEY, ARKANSAS  
NICK SMITH, MICHIGAN  
PAT ROBERTS, KANSAS  
EX OFFICIO MEMBER

NEIL P. MOSEMAN  
MINORITY CONSULTANT

Mr. Chairman, I would like to thank you for holding this important forum on a crucial matter facing the American farm industry. In Missouri alone, 1993 has been a year that has plagued farmers to historic proportions. Missouri's farmers and ranchers have experienced unprecedented flood waters which have submerged entire farm communities and ravaged surrounding crop lands creating economic disaster and billions of dollars in losses for thousands of residents and their local communities. Mr. Chairman, the devastation is shocking and yet, heavy rains and flooding in some areas continue.

Indeed, the disaster situation in Southern Missouri has been a tremendous contrast. While the record flood waters of the "mighty" Mississippi River have overwhelmed fields, farms, and communities alike, drought conditions have placed other areas of Missouri's southern farming region at great risk.

Crop losses in Missouri -- particularly Southern Missouri -- are at dramatic levels. Worse yet, many Missouri communities are anticipating more flood waters with nothing more than destroyed or partially destroyed levees and dikes to protect them. Clearly, the need for further federal emergency monies and increased disaster relief funds is both desperate

and immediate so that economic damage to our rural towns and communities is not completely overwhelming.

Yet another near-tragedy has befallen many of Southern Missouri's corn producers. The contamination of corn by aflatoxin has wreaked havoc with harvest efforts and virtually eliminated markets overnight. In late August, I was in the midst of an extensive, annual agriculture tour of Southern Missouri when the news first hit. Hundreds of farmers were turned away at both grain elevators and ports due to the aflatoxin infestation. Truckloads of corn, albeit entire corn fields and crops were rendered useless because of this microtoxin affliction.

The Food and Drug Administration's action to allow blending for the purpose of livestock consumption has helped ease the pain somewhat. I commend FDA Associate Commissioner Ron Chesemore, Mr. John Wessel, and their staff for their expedient and decisive efforts to help thousands of Missouri corn growers in their struggle to deal with yet another natural calamity. However, we are far from having this dilemma behind us.

Today, this committee is moving forward in responding to the needs of so many domestic agricultural producers who have fallen victim to this recent natural disaster and related problems. Our farm producers need help and they need it now for far too many have nowhere to turn. The help and assistance this committee, this Congress, and the Administration can bring to the many suffering throughout our local towns and communities is more critical now than ever.

Mr. EMERSON. And I would note that we have—my statement is directed largely to the aflatoxin problem that we are suffering in my region of the country. I wanted to ask how will quality loss—what effect will that have on disaster payments for producers with aflatoxin contamination?

Mr. WEBER. We will treat aflatoxin as we have in the past, that if it exceeds the FDA level, we will zero that production out, provided the producer destroys the production.

Mr. EMERSON. What type of grade or quality discounts are allowable for producers taking contaminated corn to an elevator or a port?

Mr. WEBER. We have, speaking of corn, for instance, we have a chart, a basic chart to go by which says that if you have No. 4 corn, that it would be a 10 percent discount for quality.

If it is No. 5, I believe it is 20 percent. And if it is sample, it is 40 percent.

But then we have a further adjustment that says if the producer can bring in evidence to show that he has sold the crop for a discount to the normal market of greater than those values, we will use that reduction instead.

Mr. EMERSON. Thank you.

Thank you, Mr. Chairman.

Mr. JOHNSON. The gentleman from Minnesota, Mr. Peterson.

Mr. PETERSON. Thank you, Mr. Chairman.

Mr. Weber, I just got a call from my State ASCS director who thinks that there is going to be a new quality adjustment on wheat coming out today.

Is that true?

Mr. WEBER. Yes.

Mr. PETERSON. Can you tell me what it is?

Mr. WEBER. Basically what I just said to Mr. Emerson, as far as getting away from the complicated formula that we had and just basically looking at a standard price compared to the price received by the producer.

Mr. PETERSON. So that is going to be announced today?

Mr. WEBER. Yes.

Mr. PETERSON. Thank you.

Last week I introduced an amendment to try to deal with this situation that we keep hearing about, that the Canadians are dumping their damaged wheat into our market. They have, as I understand it, a worse vomitoxin problem in Manitoba, Saskatchewan, than we do.

Do you know anything about this, whether that is, in fact, happening?

Mr. WEBER. I personally do not know. Certainly there is the expectation that they are having a vomitoxin problem such as we are.

We are looking at that amendment that you have introduced and are evaluating that right now.

Mr. PETERSON. Mr. Chairman, I introduced that bill this morning on the floor of the House, and I would hope that we could consider that.

I have been looking into this a little bit more, and it just seems to be kind of a crazy policy to inspect all of the wheat that we export to other countries, but not pay any attention to what is coming

into this country. It just seems to be kind of a crazy way to do business.

So we hope that we can find out some way to inspect this wheat and have some idea what kind of quality it is and what affect it is having.

I was talking to one of my elevators yesterday that bought three truckloads of wheat from Canada. It is a big problem trying to get it inspected. The vomitoxin tests take 10 days. Whereas I understand, if the Grain Inspection Service did it, they have the ability to do that quicker.

And it just, I think, would solve a lot of problems if we could address this somehow or another, whether it's through a bill or you doing it administratively.

Mr. WEBER. We appreciate your comments.

Mr. PETERSON. Thank you, Mr. Chairman.

Mr. JOHNSON. The gentleman from Oregon, Mr. Smith.

Mr. SMITH of Oregon. Thank you, Mr. Chairman.

Mr. Weber, since the administration has determined that quality loss ought to be compensable, I was very critical of that decision until you decided to cover sprouted wheat which made me a lot more interested in your program.

However, I want to talk with you a minute about the decision about compensation for quality on all commodities in this text.

First let me ask you: How much has been expended by the Department for quality loss above the normal program of disaster relief?

Mr. WEBER. From the standpoint of 1993, I really don't have a number at this point because we are just getting started in that process.

With regard to earlier years, up to this point, only quality loss payments were made with regard to the 1992 crop of corn; and that was about \$120 million.

Certainly we are making quality adjustments for other program crops for 1990, 1991, and 1992; and it is expected that will expend a good deal of the \$300 million that is appropriated for those losses.

Mr. SMITH of Oregon. Mr. Weber, assuming—well, the facts are that payments to people with disasters are about 25 cents on the dollar roughly, I think, 26 cents after all the formula process.

Are we dissipating the opportunity to repay a higher margin to those who have disasters because we have quality relief now?

Mr. WEBER. Certainly within a framework of limited dollars, when you include quality adjustments, it does cut down on that.

However, those producers that suffer that quality seem to think they need to have some consideration in that vein as well.

Mr. SMITH of Oregon. I understand. Everybody that has a loss wants repayment from somebody.

Well, for instance, we have a green bean problem in Oregon. If they qualify for loss, will green beans be covered with quality?

Mr. WEBER. The statute does provide for quality—has provided for quality losses on nonprogram crops.

Mr. SMITH of Oregon. So green beans would qualify?

Mr. WEBER. Would qualify, yes.

Mr. SMITH of Oregon. We have rain-damaged splitting in cherries.

Mr. WEBER. That would qualify as well.

Mr. SMITH of Oregon. We have talked about wheat.

Grass seed, we have had a tough season; it is very wet; can't harvest grass seed very well. We have a drop in production of grass quality. Covered?

Mr. WEBER. That would be covered.

Mr. SMITH of Oregon. I think the point is made that somebody somewhere should sit down and discuss the philosophy of what we are doing here. Everybody wants to be Santa Claus, but we have expanded this program now to cover quality which no one ever dreamed some of these crops would be covered. It is nice. It is good for the farmer.

Do we have the money to cover disaster and all these exotic side effects of quality? That is my question. And I want to follow carefully. And if you will give me numbers of expenditures for quality payments for farmers to loss of quality product, I would appreciate it.

Mr. WEBER. Thank you.

[The information follows:]

Payments for quality loss for 1990-91-92 crops have not been made yet; expenditure totals will be available late in 1993. Quality loss adjustment payments for the 1993 crop will not be available until mid-1994.

Mr. JOHNSON. The gentleman from Missouri, Mr. Volkmer.

Mr. VOLKMER. Yes, I have several questions.

I would like to get to those. First let me read you some questions and answers. You tell me if you agree with it rather than me put you on the spot and ask you for an answer that may be different. I would rather get you on the record as, approving this answer, I like this answer.

The question is: Is unleveled bottomland ever eligible for ECP cost-share assistance?

And if so, under what circumstances?

And the answer would be, yes, provided the land is not under a flowage easement and the COC is able to make a determination that the land is not susceptible to frequent damage.

Is that the correct answer?

Mr. WEBER. That is good.

Mr. VOLKMER. Thank you.

Can farmland that is adjacent to a river that had an annual occurrence of water overflowing the river banks onto the farmland be eligible for ECP?

Answer, yes, provided the COC determines the annual flooding has not caused severe damage to the land.

Mr. WEBER. Once again, you are right.

Mr. VOLKMER. Now, let me—as a question—this is a little subjective. The question is severe.

Mr. WEBER. I'm sorry. I didn't catch that.

Mr. VOLKMER. The subjective question that the COC is wondering about is the question of severe—has not caused severe damage to the land. And I don't know what we mean exactly by "severe."



Mr. WEBER. That certainly is subjective on the part of the county committee. We are leaving that up to them to make that decision. Yes.

Mr. VOLKMER. Is land immediately adjacent to a river eligible for ECP cost-share assistance?

Yes. However, that portion of land which is subject to—and I have a question on this—frequent damage is then eligible for ECP. This determination has been made by the COC on a case-by-case basis.

Mr. WEBER. That is correct.

Mr. VOLKMER. All right. Now, “frequent.” What is frequent?

Mr. WEBER. We haven’t defined “frequent.” We basically left that up to the county committee. We had previously defined frequent by 3 out of the last 25 years. But we have waived that requirement for 1993.

Mr. VOLKMER. So it could be, if it was once every 5 or 10 years that the land was damaged—the ground may be flooded but the land is not damaged. That occurs many times in many of our flash floods.

Mr. WEBER. Very definitely.

Mr. VOLKMER. And that if the damage hasn’t occurred except for maybe now and it hasn’t occurred for 10 or 12 years, that wouldn’t be frequent?

Mr. WEBER. I would think that is correct, yes.

Mr. VOLKMER. Has word on these answers gone out to our State and county people?

Mr. WEBER. I believe they have.

Mr. VOLKMER. We have been getting different answers.

Mr. WEBER. They have either gone out today or they went out yesterday.

Mr. VOLKMER. That will be very helpful.

I have another question. I have quite a few. My farmers out there had a good portion of their 1992 crop under loan, and in comes a flood. Now, who is responsible? Is the farmer going to make the loss? Noninsured?

Mr. WEBER. Our policy would be such that the farmer takes the loss, yes.

Mr. VOLKMER. I have a good question on that. Why? He didn’t cause the flood. There is nothing he can do about it.

Mr. WEBER. We used to cover losses that would have been associated with floods or tornadoes or whatever up until 3 or 4 years ago. And as a result of considerable pressure on the part of the insurance industry and others, our policy was changed to not cover those losses. And that is the policy at this point, good or bad.

Mr. VOLKMER. Mr. Chairman, I have—especially among areas where the normal practice is to keep the grain where it was and this year for the first time and no other time has that grain ever been damaged by flood. Now we are going to say the flood is because of the farmer.

Mr. WEBER. We have talked about this, Mr. Volkmer, on a number of occasions; and at least at this point, the decision has been not to change the policy.

Mr. VOLKMER. Let me point out one thing to you in your own regulations that I think would show that, even the county—usually

we look at it, the county committee, the county director, they pretty well know the local situation better than people elsewhere, whether it is in Washington, DC, or regional office, or any place else; and if there is a hazard in the storage structure location, if it is in a hazardous location, it is right here; the hazardous location is a storage structure such that it would expose the structure to the danger of flood, fire, or theft by a person not entrusted with the possession of the commodity. Then you are supposed to reduce the rate.

That rate has never been reduced all these years.

Mr. WEBER. I do not know. I cannot address that. But I would be willing to get back with you on that issue.

Mr. VOLKMER. I would like for you to look at that because I think, by your own regulations, you are prescribing that if it is in a hazardous location, the rate should be reduced; and that would give me some inclination that there is a reason.

If the rate has never been reduced because it is not really in a hazardous location, but this year of all years it gets flooded and never before, I think we ought to take a good look at it.

Mr. WEBER. We will take a look at it, yes.

Mr. JOHNSON. Mr. Barrett.

Mr. BARRETT. Thank you, Mr. Chairman.

Mr. Weber, my district is, I think, the third largest in the Nation in terms of production for dried, edible beans; and there seems to be some confusion out there as to whether or not they are actually covered under quality loss adjustment.

For the record, can you tell me?

Mr. WEBER. Soybeans will be covered under the quality loss adjustment, yes.

Mr. BARRETT. Is there a difference on how the adjustments are handled between program and nonprogram crops?

Mr. WEBER. There is a slight difference. The net result is the same.

As far as how we are handling soybeans, they will be handled the same as grains.

Mr. BARRETT. Same as grain?

Mr. WEBER. Yes.

Mr. BARRETT. Thank you.

Moving to wheat for just a moment, a number of members of this committee, including myself, I think on the 5th of August, wrote a letter to USDA urging USDA to implement a feed wheat program.

And the question is: Has such a program been implemented?

Mr. WEBER. No, a program has not been implemented. The document is in the Secretary's office right now. It has been there for a period of time.

Mr. BARRETT. This was approximately 2 months ago. Can you give the committee any idea of when there might be an answer?

Mr. WEBER. No, I cannot.

As I say, it has been in the Secretary's office for quite some time, and I do not know what the status of it is at this point.

Mr. BARRETT. Perhaps you might suggest to the Secretary that at least the question was asked this morning.

Mr. WEBER. I certainly will.

Mr. BARRETT. Thank you.

Mr. WEBER. Thank you.

Mr. BARRETT. Thank you, Mr. Chairman.

Mr. JOHNSON. Mr. Minge.

Mr. MINGE. Mr. Chairman, I would like to start by asking a couple of questions concerning Federal crop insurance. And basically the first is: Did you become involved in any consideration of whether there should be some modifications with respect to Federal crop insurance or improvements in the disaster program that is directly administered by ASCS?

Mr. WEBER. With regard to 93 or with regard to the reform of crop insurance?

Mr. MINGE. No, with regard to 93, such as covering preventive planting as one way of administering the disaster program or increasing the level of payments directly within the disaster program.

Mr. WEBER. There was certainly discussion early on. And I would like Mr. Witt to address that.

Mr. MINGE. There has been some concern that increasing prices for corn and any other program commodity will affect the obligation to repay advanced deficiency payments, or will trigger an obligation to repay advanced deficiency payments, or reduce the second installment of the deficiency payments and that this will strike particularly hard on those farmers who have a very low yield and, as a consequence, will have perhaps an obligation to repay a substantial amount of an advanced deficiency.

Could you comment on what, if anything, the Department is considering doing to relieve those farmers of what would be a double hit, one, losing some crops, and two, losing the benefits of the program?

Mr. WEBER. By statute, we cannot pay a deficiency payment and a disaster payment on the same bushel. So we are required to make appropriate adjustments.

Given the fact that, especially for corn, market prices have risen and the deficiency payment is expected to be considerably less than the 72 cents that we estimated, certainly there will be instances where producers—when we make the final payment next March we will find that the final payment, especially if they have had, for all practical purposes, a total loss on the crop, that they will find themselves in a position that they likely will owe part of that advanced payment back.

At that point, we will notify the producer that moneys are due and payable. However, we will work with the producer, if he is not able to make repayment of those funds immediately, we will work with him as far as setting up some level of installment payment.

Mr. MINGE. Are you required to do that by law, or could you waive the obligation to repay the advanced deficiency payment?

Mr. WEBER. We do not have the statutory authority to waive the obligation to repay. So the only thing we can offer is extend the terms for repayments.

Mr. MINGE. The 0/92 program has been extended until September 17—or was extended until September 17.

Is there any further extension that is currently under discussion?

Mr. WEBER. No, there is not.

Mr. MINGE. One problem that we have seen is that farmers are faced with, and in the last week, the obligation to determine whether or not there is going to be a killing frost before the corn crop is matured to the point where it will actually produce a yield of any value and at the same time there is an opportunity to sign into 0/92.

Those farmers that signed into 0/92 are now required to disk down or destroy a crop that may well produce some fairly significant quantities of corn depending upon the frost.

If the extension had been granted until the end of the crop year, we would not have farmers faced with this virtually impossible dilemma and the anguish that they experience in destroying a crop that they have spent several months trying to grow and nurture.

Could you explain why the Department decided not to extend 0/92 on to the end of the crop year for corn?

Mr. WEBER. For one thing, the 0/92 program, I think as we have talked about before, technically got out of hand as far as what it was originally intended for anyway. And in an effort to help, we got into this situation of allowing producers to plow up to get into the 0/92 and run into the situation. And it became a point at which a decision had to be made to shut it off.

Yes, it might have been better, given the process that we have gone through, to simply extend it through crop maturity; but given the other pressures we were receiving on the other end, the decision was made at the Secretary's level to cut it off as of September 17 and not to go any further with this process.

Mr. MINGE. Could you just quickly list what those other types of pressures were or considerations, the countervailing ones?

Mr. WEBER. Well, we had the countervailing—the pressures of plowing up a potential crop, not giving the weather the opportunity to decide what the crop results would be.

We were getting the negative press from that side. So it was a matter of just simply deciding we had gone far enough but maybe too far, and we had to stop it at some point.

Mr. JOHNSON. Mr. Nussle.

Mr. NUSSLE. Thank you, Mr. Chairman. Let me yield to my friend Mr. Barrett for a clarification.

Mr. BARRETT. I thank the gentleman for yielding.

Mr. Weber, my concern initially was dry edible beans. I believe, correct me if I am wrong, you answered soybeans are covered—

Mr. WEBER. Well, soybeans. And the process would be followed the same as grains.

Now, as far as dry edible beans, there is a process for determining quality loss there as well.

Mr. BARRETT. But a nonprogram crop like dry edible beans is covered under—

Mr. WEBER. Under a quality loss, that is correct.

Mr. BARRETT. There may be a slight adjustment in the way the adjustment is handled.

Mr. WEBER. Yes.

Mr. BARRETT. And it will be handled the same as grain, feed grains.

Mr. WEBER. It is handled slightly different. Basically, as far as other program crops in which dry edible beans—we look at a pri-



mary market. And if the producer or, as a result of qualities, the producer cannot sell into the primary market and has to sell into a secondary market, then we zero out the production bases, the primary market, and then adjust the disaster payments based on the value received for the secondary market, which is somewhat similar to what we are doing on grains.

Mr. BARRETT. Thank you for that clarification.

I thank the gentleman for yielding.

Mr. NUSSLE. Yes.

Mr. Weber, I just wanted to follow up on a couple of things.

First of all, last year it is my understanding that—or after last year—the policy was discontinued with regard to rolled, cracked, crimped recourse loan program for corn. And I am wondering if that is being considered for reinstating this year?

Mr. WEBER. We have a decision document that is in the Secretary's office right now on that issue.

Mr. NUSSLE. Am I going to like the answer to that?

Mr. WEBER. I don't know at this point.

Mr. NUSSLE. I am going to give my questions to Mr. Volkmer. I like his method of doing things. So if I said the answer was yes, how does that sound?

Mr. WEBER. I would not want to agree with that at this point anyway.

Mr. NUSSLE. All right. We will follow up with that.

My second question was in the area of the CRP and whether or not the September 30 deadline could be extended possibly a month.

Mr. WEBER. That question came up earlier this morning from another source as well, and we are looking into that right now.

Mr. NUSSLE. I hope you give that favorable consideration because, again, many of the farmers that I have talked to have not been able to utilize this first extension because of the wet weather.

Mr. WEBER. OK.

Mr. NUSSLE. And then, finally, there has been a lot of questions about quality losses. I want to make sure I have my facts straight.

Is there a place I can look to determine what the standards are for quality losses for all of these different—whether we are talking about edible beans or we are talking about corn?

I mean, where do we go to find the standards to determine whether or not—and the reason I am asking this is because we are getting a lot of farmer questions.

They are saying, How do I know? What do I do? What am I looking for? And I want to be able to tell them or give them something that can show, this is how we can, through step by step, determine that.

Mr. WEBER. I think after today, after we send the amendment out that is making the adjustments on the grains, that it is in our—what we call our One PAD handbook that will show what adjustments are appropriate for the grains as well as the nonprogram crops. Those are at the county office.

Mr. NUSSLE. That goes to the county office?

Mr. WEBER. Yes.

Mr. NUSSLE. Is it possible to get a copy of that?

Mr. WEBER. We will excerpt the pages and make certain you get a copy.

Mr. NUSSLE. I would be interested in that because we are starting to get a few questions, not that we are going to give them that advice; but it would be nice to at least help them through that process if possible.

I have some other questions with regard to crop insurance that I think Mr. Minge earlier was very concerned about that program and the way it has worked with regard to our disaster assistance this year, but I think I am going to save those for Mr. English's subcommittee.

But I would say, bottom line, just as a FYI, I have had a lot of farmers that have been very concerned about the prevented planting issues with regard to Federal crop insurance. I don't think they understood all of the different nuances of that. And I think that has really thrown a lot of them into a tailspin. It may be part of the reason why 0/92 comes up as an issue, in some instances, not all. But I will save that for Mr. English's subcommittee.

Thank you.

Mr. JOHNSON. The Chair exercises its discretion to recognize Mr. Bishop out of order. He has another immediate obligation and joined us in timely fashion.

And so if the members will bear with me, Mr. Bishop.

Mr. BISHOP. Thank you very much, Mr. Chairman.

Let me, again, thank Mr. Weber and the Department for the efficient way that you have been implementing the disaster programs. We are very grateful for that.

There do exist some problems in Georgia that I would like to share with you and perhaps explore some remedies for them.

There is a situation where a farmer, particularly a peanut farmer who has leased land or quota from a landowner but can't get a disaster payment without the quota holders or the landowner's signature, whether or not there is a negative undermarketing situation.

This means the quota that is rented or paid for by the producer-operator can be taken back without compensation by the owner, even though the owner was willing to lease and to have the quota used at an agreed upon price.

Some owners are requiring additional payments from the operator-producer in order to sign the claims, and the farmer is then forced to pay double. And it is sort of a bad situation, particularly after he has sustained a significant loss and now he has to pay double because he is renting property and renting a quota.

Is the Department considering any relief? Or can you develop regulations that could fine-tune this so that farmers won't be caught in a position where they could be blackmailed or—which is almost what it amounts to, in this, almost a predatory situation?

Mr. WEBER. I will get back to you on this answer. I had gotten your questions earlier, and I had not had an opportunity to review the answers. So we will be getting back to you on those very quickly.

Mr. BISHOP. Thank you very kindly for that.

[The information follows:]

Signature of the farm's owner is required before a disaster assistance payment may be made for loss of expected peanut production. The owner's signature is necessary because the farm's undermarketings for peanuts are reduced to the extent that disaster assistance payments are made for loss of production of quota peanuts. This impacts the farm's peanut quota in the next year.

Also, the owner's signature is required because ASCS does not have information with respect to the terms of a producer's rental agreement. If such an agreement were available, the terms may be ambiguous and ASCS should not have to interpret the terms of such an agreement.



Mr. BISHOP. With regard to cotton and peanuts, the second question had to do with the case where more than one cotton producer, each independent of the other, rent a farm under one farm unit number and where one producer has a disaster and the other one has no disaster, perhaps because one of them had irrigation and the other one didn't. The other is a dryland farmer, but the farm unit is taken as a whole so that the producer with the disaster may be left with little or no payment, though his loss was pretty severe.

But on the other hand, it seems to me that one producer who may have had the irrigated acreage or while the other one had the dryland, that each should have a distinct—well, each of them has a different marketing card; each of them has his own independent history.

It would seem as if, based upon the idea behind the program, that you ought to want to help the individual farmer and not take the unit as a whole.

And the question is whether or not you can develop some more equitable regulations and policies in this kind of a situation so that the individual farmer, even though he may be operating with some other farmers under a single farm unit number, can be compensated for his loss.

And I say that because I commend the Secretary and this administration for the efforts that you have undertaken to make this administration's policies be farmer friendly.

And I just wanted to lift up and highlight this kind of a problem, because it is serious for cotton and peanut farmers in Georgia, to see if there is a remedy that can be developed through regulations or whether or not we need legislation. Hopefully it can be covered through regulations.

Mr. WEBER. In this particular instance, it would require a change in legislation because the losses are determined based on a farm. And in the example that you quote, it may well be possible, because of the production off that irrigation, that it makes the entire farm not eligible for disaster losses.

However, if the farm should qualify for disaster losses, the payments can be paid. Any payments that are paid can be paid to the producer that suffered the loss, rather than splitting the payments out to someone that didn't have a loss.

But to look at the individuals separately would require a change in legislation.

Mr. BISHOP. Thank you very much, Mr. Weber.

And thank you, Mr. Chairman, for your consideration.

Mr. JOHNSON. Mr. Pomeroy.

Mr. POMEROY. Thank you, Mr. Chairman.

First, I would like to commend you for taking diminished quality into account as you have looked at the disaster adjustment.

If we are going to run a disaster program in the most equitable way possible, I think we have to look at what happens to the farmer when he brings his crop to the market. And if you don't look at quality and its impact on the price discounts that farmer receives, you really don't have a fair picture of the actual loss from the disaster.

Is that the basis for why USDA has moved forward in this way?

Mr. WEBER. That is correct.

Mr. POMEROY. Is it, then, your intention to compensate in a manner that is somewhat similar to the Federal crop insurance loss adjustment procedures?

Mr. WEBER. I think the way we have it set up now, we are very similar. Yes.

Mr. POMEROY. Why has ASCS just not used the Federal crop insurance loss adjustment process?

Federal crop insurance has historically covered quality problems as well and, therefore, has a directly relevant loss adjusting procedure all set up.

What decisions did you make in deciding that you would try and go a different route?

Mr. WEBER. Well, we looked at those procedures, and we felt that since we already established a posted county price and that was a figure that was used for other programs, that that made some sense to move in that direction.

And that is principally why we have deviated some from the two, from the crop insurance adjustments. And it may well be something that we need to look into as we look down into the future as to whether we might use this process rather than the process that is currently being used by Federal crop insurance.

Mr. POMEROY. I would encourage you to do exactly that so that a farmer carrying crop insurance is not having the loss calculated in entirely different ways by the same Department of the U.S. Government.

Mr. WEBER. And I don't disagree with you at all.

Mr. POMEROY. We have had discussions on this, Mr. Weber, over the past several weeks, and I have worked with your Department.

Mr. WEBER. Yes.

Mr. POMEROY. I want to commend you, to the limited extent of my understanding, on the most recent revision. As late as Friday, I was back in North Dakota trying to work through the nuances of the previous draft.

Since then there has been another revision.

Mr. WEBER. That is correct.

Mr. POMEROY. When was that?

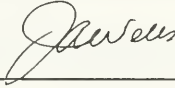
Mr. WEBER. Notice is going out today. We can furnish you with copies. We have copies here, at least of the salient points that we are trying to correct here.

[The information follows:]

**UNITED STATES DEPARTMENT OF AGRICULTURE**  
 Agricultural Stabilization and Conservation Service  
 P.O. Box 2415  
 Washington, DC 20013-2415

<b>Disaster Assistance 1-PAD (Revision 2)</b>	<b>Amendment 28</b>
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**Approved by:** Acting Deputy Administrator, State and County Operations



**Amendment Transmittal**

*A*

**Reasons for  
Amendment**

Subparagraph 182 K has been amended to change the quality adjustment procedure for 1993.

Exhibit 10.5 has been amended to provide an example of the revised Quality Adjustment Scratch Pad. Camera-ready copies will be sent to State Offices under separate cover.

Exhibit 11 has been amended to update the county codes for Texas.

Page Control Chart		
TC	Text	Exhibit
	4-31 through 4-34 4-37, 4-38 4-38.5, 4-38.6	10.5, pages 1-4 11, pages 7, 8

## 182 Adjustments to Actual Production Because of Quality Losses

---

A

### Quality Loss Adjustments

Actual production may be adjusted because of quality losses resulting from damaging weather and related conditions.

**Notes:** Do not adjust quality because of damaging weather or related conditions occurring after the crop is harvested. "Harvested" means the crop is ready for storage. For example, wheat or hay that has been windrowed is not harvested, wheat that has been threshed or hay that has been baled is harvested.

Use Exhibit 10.5 for performing calculations.

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B

### Quality Grade Table

General rules for determining \* \* \* grades are given in the following table. If exceptions apply to specific crops, those exceptions are included with the factor for the crop.

\*--If the grade shown on the production evidence reflects a grading factor that was also used to reduce the gross quantity, determine the grade without regard to the grading factor and use grade in determining the quality adjustment.

**Example:** The quantity of soybeans was reduced for foreign material and graded U.S. Sample by the buyer because of the percent of foreign material. By disregarding foreign material, the soybeans would have graded U.S. Number 4. The quality adjustment factor for U.S. Number 4 should be used with the net bushels shown on the production evidence for calculating disaster benefits.

If the production evidence does not show the grading factors that made up the grade, COC must determine whether the quantity was adjusted by the buyer for grading factors that also determined the final grade. If COC determines the grade was based on a grading factor that also reduced the quantity, COC shall determine the grade without the grading factor based on similar farms.

**Example:** The production evidence showed only the net quantity and grade. COC determined that the quantity was reduced for foreign material so COC uses similar farms to determine the grade without regard to foreign material.--\*

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*Continued on the next page*  
**Page 4-31**

## 182 Adjustments to Actual Production Because of Quality Losses, *Continued*

B

### Quality Grade Table, *Continued*

IF the producer...	AND...	THEN...	
has production evidence	the grade is shown on the production evidence	use the grade shown.  <b>*--Note:</b> Ensure that the quantity is not adjusted by both the buyer and COC for the same grading factor.--*	
	the grade is not shown on the production evidence, but grading factors are shown	use the grading factors in applicable price support handbooks to determine the grade based on those factors.  <b>Note:</b> Disregard special designations.	
	neither the grade nor the grading factors are shown on the production evidence	<b>IF...</b>	<b>THEN...</b>
		evidence provided is sales evidence	require the producer to contact the buyer to provide documentation of the *--grade, factors, and quantities needed to determine adjustment.--*
		evidence is a load summary or assembly sheet	require the producer to contact the warehouse or delivery point to provide documentation of the grade delivered.
		neither of the following applies: • evidence provided is sales evidence • evidence is a load summary or assembly sheet	*--determine grade and grading factors based on the average grade--* produced on similar farms.  <b>Note:</b> If the producer has the crop on hand and is dissatisfied with the COC determination of similar farms, the producer *--may request ASCS sample,--* and pay the cost to have a grade determined for the production.
does not have production evidence or production was appraised	the commodity cannot be sampled	assign a grade based on the average grade produced on similar farms.	

**182 Adjustments to Actual Production Because of Quality Losses, *Continued****B***Quality Grade  
Table,  
*Continued*****Notes:** The similar farms may or may not be the same farms used when assigning production.

COC must determine which farms have similar quality to the farm for which quality is assigned.

*C***Factor  
Adjustments for  
Wheat, Feed  
Grains, and  
Soybeans**

Adjust actual production for wheat, feed grains, and soybeans by the factors in the following table for production for which eligible disaster conditions affected the quality.

\*--For 1993 crops, see subparagraph K to determine whether additional adjustments apply.--\*

Percent Production			
Crop	U.S. Grade		
	4	5	Sample
Barley	95	90	75
Corn	90	75	60
Grain Sorghum	90		70
Oats	70		50
Wheat	95	90	75
Soybeans	95		70

The adjustments:

- apply to all types of barley
- \*--do not apply to corn intended for silage.--\*

*Continued on the next page*

**\*-182 Adjustments to Actual Production Because of Quality Losses,**  
*Continued*

**D**  
**Adjustments for**  
**Peanuts**

To determine whether farm is eligible for quality adjustments, each ASCS-1007 for the farm will be used to determine the deficiency by type.

Use the operator's sales certification to determine that ASCS-1007's have been provided for all production. If a correction document has been issued for ASCS-1007, use applicable information from the correction document for making determinations for quality adjustments. The farm operator will be responsible for providing the applicable ASCS-1007.

Determine adjusted actual production according to the following table.

Step	Action
1	For each type of peanuts produced on the farm, separately add the net weight from item G and the total dollars in item P (for the 1990-crop, in the "VC" area, only use item O) for each ASCS-1007 for the farm for the respective type.
2	For each respective type, divide the total dollars by the total net weight. Round result to 4 decimals.
3	For each respective type, divide the result in step 2 by the national average price per pound for the respective crop, as provided in subparagraph E, to determine a factor. Round the factor to 5 decimals. If the factor is equal to or greater than 1.00000, the farm is <b>not</b> eligible for quality adjustments.
4	If the factor is less than 1.000000, multiply the total net weight for the respective type, from step 1, times the factor for the respective type from step 3. Round to whole pounds.
5	Determine the sum of the pounds from step 4 for all types of peanuts produced on the farm.
6	Add the result in step 5 to the quantity of peanuts retained on the farm for the respective year but not accounted for through step 1. The result is the production to be used as actual production for the respective year for disaster purposes because of quality losses.

*Continued on the next page*



**\*-182    Adjustments to Actual Production Because of Quality Losses,**  
*Continued*

*H*  
**Adjustment  
Factors for  
Sunflowers-Oil**

Adjust actual production for sunflowers reported with intended use of oil by the factors in the following table for production for which eligible disaster conditions affected the quality. The adjustments are based on oil content.

Percent Production			
Oil Content Percentage			
38.9-35.0	34.9-31.0	30.9-28.0	27.9 or less
90	70	50	25

*I*  
**Factor  
Adjustments for  
Sunflowers -  
Non-Oil**

Adjust actual production for sunflowers reported as non-oil by the factors in the following table for production for which eligible disaster conditions affected the quality. The adjustments are based on test weight.

Percent Production		
Test Weight Range		
19.9-18.0	17.9-16	15.9 and lower
85	70	50

*Continued on the next page*

**182 Adjustments to Actual Production Because of Quality Losses, *Continued****J***Factor  
Adjustments  
for Rice**

Adjust actual production for rice by the factors in the following table for production for which eligible disaster conditions affected by quality.

Milling Yield (Whole Kernel)	Percent Production				
	U.S. Grade				
	1-3	4	5	6	Sample
45 or less	90	90	85	70	20
Greater than 45	100	90	85	70	20

*K***\*--Additional  
1993 Quality  
Adjustment  
Provisions for  
Wheat, Feed  
Grains, and  
Soybeans**

For 1993, COC may determine quality adjustments according to the following table if the crop was affected by disaster conditions that caused the price to be discounted beyond the discounts provided in the applicable percent production tables.

- If the crop was sold, the producer must provide sales documentation that shows the price and grading information.
- If the production was not sold or disposed of, the producer may request that COC draw a sample and pay the cost for--\* determining the grade and other discount factors that could have an impact on the price received for the crop. Based on the results of the tests, use the average price received by farms having similar grades and discount factors.
- \*--If the production was disposed of and no grade or price information is available for the farm, use similar farms that have grade and price information.--\*
- COC must determine that the poor quality was the result of an eligible disaster condition.

*Continued on the next page*

## 182 Adjustments to Actual Production Because of Quality Losses, *Continued*

K

\*--Additional  
1993 Quality  
Adjustment  
Provisions for  
Wheat, Feed  
Grains, and  
Soybeans.--\*

Continued

Step	Action	
1	Determine the percent of production based on the grade of the crop according to subparagraph C * * * .	
2	*--Determine posted county price, or regionally calculated price for the day of--* sale, * * * for the commodity according to 3-LP.	
3	Divide the price received by the producer by * * * step 2. Round to 4 decimals.	
	IF the result is...	THEN...
	*--higher than step 1	apply adjustments from step 1 to the actual production.
	lower than the result of step 1	reduce actual production by multiplying the percent obtained in step 3 by the actual production.

**Note:** This subparagraph does not apply to tobacco, peanuts, upland cotton, ELS cotton, sugar beets, sunflowers, and rice.--\*

**\*--182.5 Adjustments to Cotton Production Because of Quality Losses***A***Quality Loss  
Adjustments**

Actual upland cotton production may be adjusted because of quality losses resulting from damaging weather and related conditions.

**Note:** Do not adjust quality because of damaging weather or related conditions occurring after the cotton is harvested. "Harvested" means the crop is ready for storage. For example, cotton is not considered harvested until the cotton is ginned.

*B***ELS Cotton**

Adjust actual production for ELS cotton by factors in the following table for production for which eligible disaster conditions affected the quality. The adjustments are based on a combination of grade and micronaire.

**Note:** Use the quality grade table in subparagraph 182 B for determining quality grade for ELS cotton.

Grade	Micronaire			
	3.5 and Above	3.3 - 3.4	3.0 - 3.2	2.7 - 2.9
1	100	100	95	80
2	100	100	95	80
3	100	100	90	80
4	100	90	80	65
5	60	60	40	30
6	50	45	40	20

*Continued on the next page*

**Quality Adjustment Scratch Pad**



**Quality Adjustment Scratch Pad***A***Completing  
Quality  
Adjustment  
Scratch Pad**

Calculate on the same line each lot, load, or warehouse receipt quantity that has the same quality (grade and grading factors) grade standards, sales price, and date of sale according to subparagraph 182 K.

\*--Use columns 1, 2, 3, and 9 to calculate quality adjustments for--\* 1990 through 1992, and 1993 when subparagraph 182 K does not apply.

**Note:** Ensure that the same unit of measure is used throughout the calculation.

State and County Offices shall complete the Quality Adjustment Scratch Pad according to this table.

Column	Instructions
1	Enter the applicable quantity.
2	Enter the grade, or grade based on grading factors. See page 4 for applicable 2-LP references.
3	Enter the applicable percent production from the applicable table in paragraph 182.
4	Enter the sales price received, per applicable unit of measure, by the producer from the buyer. See page 4 for the applicable unit of measurement.
5	Enter the date of sale.
6	Enter the posted county price, determined according to 3-LP, that was effective on date of sale in column 5.  *--Note: Do not adjust the terminal prices by the applicable footnotes for premiums and discounts. The terminal prices shall be adjusted by the footnotes applicable to differential changes.--*
***	***
7	*--Enter the result of column 4 divided by column 6. Round to 4 decimal places.
8	Enter the smaller of column 3 or 7.
9	Enter the result of column 1 multiplied by column 8. Total this column and transfer--* information to ASCS-658.

*Continued on the next page*

### Quality Adjustment Scratch Pad, *Continued*

*B*

### Example of Quality Adjustment Scratch Pad

This is an example of the Quality Adjustment Scratch Pad.

★         

[illegible]

—★

*Continued on the next page*

**Quality Adjustment Scratch Pad, Continued****C**  
**Grading Factors,**  
**Units of**  
**Measurement, and**  
**2-LP References**

This table lists the grading factors, units of measurement, and 2-LP references.

Commodity	Disaster Related Grading Factors	Unit of Measurement	Premiums and Discounts
Barley	<ul style="list-style-type: none"> <li>• Grade</li> <li>• Test weight</li> <li>• Damaged kernels</li> <li>• Thin barley</li> </ul> 2-LP Grain, Exhibit 20	Bushel	2-LP Grain, Exhibits 10 and 40
Corn	<ul style="list-style-type: none"> <li>• Grade</li> <li>• Test weight</li> <li>• Total damage</li> </ul> 2-LP Grain, Exhibit 21	Bushel	
Grain Sorghum	<ul style="list-style-type: none"> <li>• Grade</li> <li>• Test weight</li> <li>• Total damage</li> </ul> 2-LP Grain, Exhibit 22	Hundredweight	
Oats	<ul style="list-style-type: none"> <li>• Grade</li> <li>• Test weight</li> <li>• Sound oats</li> </ul> 2-LP Grain, Exhibit 23	Bushel	
Wheat	<ul style="list-style-type: none"> <li>• Grade</li> <li>• Test weight</li> <li>• Total damage</li> </ul> 2-LP Grain, Exhibit 25	Bushel	
Soybeans	<ul style="list-style-type: none"> <li>• Grade</li> <li>• Test weight</li> <li>• Total damage</li> <li>• Other colors</li> </ul> 2-LP Oilseeds, Exhibit 10	Bushel	2-LP Oilseeds, Exhibit 10

\*--County Loan Rate Adjusted for Average Quality, *Continued*

County Loan Rate Adjusted for Average Quality				
State	County Codes	Loan Rates (Cents per Pound)		
		1990	1991	1992/1993
South Carolina	005, 009, 011, 013, 015, 017, 019, 027, 029, 031, 033, 035, 041, 043, 049, 051, 053, 061, 067, 069, 075, 085, 089	49.65	50.15	51.70
	011, 003, 007, 021, 023, 025, 037, 039, 045, 047, 055, 057, 059, 063, 065, 071, 073, 077, 079, 081, 083, 087, 091	50.25	50.75	52.30
Tennessee	005, 017, 023, 033, 039, 045, 047, 053, 069, 071, 075, 077, 079, 095, 097, 109, 113, 131, 157, 167, 183	49.72	50.22	51.77
	003, 007, 013, 015, 027, 031, 035, 041, 049, 051, 055, 061, 087, 103, 111, 115, 117, 127, 129, 133, 137, 141, 149, 151, 153, 159, 165, 169, 175, 177, 185, 189	49.92	50.42	51.97
	001, 009, 011, 019, 025, 029, 057, 059, 063, 065, 067, 073, 089, 091, 093, 105, 107, 121, 123, 139, 143, 145, 155, 163, 171, 173, 179	50.22	50.75	52.30

*Continued on the next page*

County Loan Rate Adjusted for Average Quality, *Continued*

County Loan Rate Adjusted for Average Quality				
State	County Codes	Loan Rates (Cents per Pound)		
		1990	1991	1992/1993
Texas	011, 017, 0045, 069, 079, 107, 117, 125, 153, 169, 189, 219, 279, 303, 305, 369, 381, 437, 445, 501	42.06	42.56	44.11
	009, 075, 087, 101, 129, 155, 179, 191, 197, 269, 345, 483, 485, 487	42.45	42.95	44.50
	023, 049, 059, 081, 083, 095, 133, 151, 207, 235, 237, 253, 263, 275, 307, 335, 353, 383, 399, 413, 415, 417, 429, 433, 441, 447, 451, 503	44.32	44.82	46.37
	*--003, 033, 115, 165, 227, 317, 371,--* 389, 475	45.18	45.68	47.23
	163, 249, 271, 273, 297, 325, 463, 507	47.11	47.61	49.16
	007, 015, 025, 029, 057, 089, 187, 209, 239, 255, 285, 321, 355, 391, 409, 469, 473, 477, 481, 493	47.21	47.71	49.26
	021, 027, 041, 051, 055, 077, 113, 121, 139, 145, 217, 225, 251, 289, 293, 309, 331, 349, 395, 439, 453, 471, 491	47.33	47.83	49.38
	037, 039, 085, 097, 119, 147, 157, 167, 181, 201, 213, 231, 257, 277, 387, 467	47.48	47.98	49.58
	061, 215, 427, 489	48.75	49.25	50.08
	041, 229	49.05	49.55	51.10
Virginia	All Counties	50.07	50.57	52.12



Mr. POMEROY. We have been in communication with the ASCS director in North Dakota, and it looks like today's version is going to produce a more equitable result.

Mr. WEBER. Yes. As a matter of fact, we talked to him on Friday and advised him that this change was being made.

Mr. POMEROY. I will reserve judgment until we have a chance to study it further, but the first read is a very good one, Mr. Weber; and I commend you for that.

In your testimony, you speak about the vomitoxin levels you allow for in grain posted for loan collateral.

Have you looked at what point were those levels set by ASCS?

Mr. WEBER. Well, we set them before FDA had come out with their more recent advisory. We said that we would make nonrecourse loans on any wheat that had four parts or less per million.

Now that FDA has changed that to five, we have changed our procedure to follow the five—to follow what FDA has set.

Mr. POMEROY. That was the thrust of what I was getting at. I was pleased that FDA did look at standards that were over 10 years old in vomitoxin levels and at that point derived largely from Canadian research and looked at available information. And actually the revised standards in 1993 loosened the vomitoxin levels somewhat.

North Dakota State University, at my request, is conducting studies on what actually the milling impact is on vomitoxin levels, and the results are showing that concentrations are dramatically reduced in the flower produced and vomitoxin tends to concentrate in the by-products.

I am wondering if you are continuing to look at this information for purposes of possibly considering even higher levels that might be acceptable to you?

Mr. WEBER. We will continue to look at those levels. And if it does suggest that higher levels would be appropriate, we would make the adjustments, yes.

Mr. POMEROY. Looks like my time is up. I will have a question on the second round.

Thank you.

Mr. JOHNSON. Mr. English.

Mr. ENGLISH. Thank you very much, Mr. Chairman.

Mr. Weber, as I understand it, livestock are not covered under any of the disaster payments; is that correct?

Mr. WEBER. Under the disaster payments, that is correct. There is the livestock feed program for shortage of feed that can be paid. However, you can't earn disaster payments and livestock feed on, again, the same acreage.

Mr. ENGLISH. What I am referring to, though, is the direct loss of livestock.

Mr. WEBER. Direct loss of livestock, no.

Mr. ENGLISH. As a result of disaster. OK. We were having that discussion. I didn't think that was the case.

To follow up a little bit with regard to the line Mr. Pomeroy was talking about on the quality, now, we have never done quality before, have we?

Mr. WEBER. Not on grains.

Mr. ENGLISH. Have we ever done it on any other crop?

Mr. WEBER. We were mandated by law on nonprogram crops.

Mr. ENGLISH. But no program crops?

Mr. WEBER. Right.

Mr. ENGLISH. So we have expanded the program in reality?

Mr. WEBER. Yes.

Mr. ENGLISH. Has the law been changed to expand the program? Or was that an interpretation of the law?

Mr. WEBER. Well, for 1992, it was an interpretation of the law. And the more recent authority for 1993 is in the statute.

Mr. ENGLISH. Yes. So 1992 is when we really started down the road with regard to quality?

Mr. WEBER. That is correct.

Mr. ENGLISH. But quality was always covered in the past by crop insurance; is that not correct?

Mr. WEBER. That is correct.

Mr. ENGLISH. So in effect, what we are doing is providing quality protection to those people who do not buy crop insurance?

Mr. WEBER. In effect, we would be, yes.

But, likewise, those that have crop insurance, they could get the same quality adjustment under ASCS as well as the quality adjustment under FCIC.

Mr. ENGLISH. So they get assistance twice?

Mr. WEBER. Could be portrayed as that way, yes.

Now, there is a requirement in the law that says that the indemnity payments that we received—the producer receives under FCIC plus the disaster payments cannot exceed a given value.

Generally that is not a factor unless the producer has opted for the high option under Federal crop insurance.

Mr. ENGLISH. Right. Of the people who are part of the flooding this year, the disaster, of those who will receive assistance under the disaster program, what percentage of those also had crop insurance?

Mr. WEBER. Mr. Witt may be able to address that more.

Mr. WITT. I would say that our average was between 45 and 50 percent in the areas that were affected in the flood areas.

Mr. ENGLISH. In the flood areas, it is only 45 to 50?

Mr. WITT. Around 50 percent, yes.

Mr. ENGLISH. So that is not much higher than the national average with regard to crop insurance.

Mr. WITT. National average is projected around 33 to 35 percent.

Mr. ENGLISH. And so this is an area that—or much of this area—generally one of the areas where we have the greater participation; is that not correct?

Mr. WITT. Yes, it is.

Mr. ENGLISH. Crop insurance program.

Mr. WITT. Some of our better producing areas for participation purposes.

Mr. ENGLISH. Is there a difference with regard—and I am probably asking the wrong person, but I assume you all are familiar with these numbers. Is that—are the people who were flooded along the river—along the rivers, is the participation level there in crop insurance much different than it is several miles away from the river in the same general area?

Is there a difference between those lowland areas?

Mr. WITT. I don't think there is any distinct differences because those areas are rated much higher for the risk involved, and people do have the opportunity to opt out if they so choose.

So I would say that I don't think our participation there is that much different, based on what I know.

Mr. ENGLISH. It wouldn't be less?

Mr. WITT. It may very well be less because of the higher risk areas and the higher rates that are charged for those more risky areas.

Mr. ENGLISH. The quality aspect, Mr. Weber, can you give us some kind of feel from a cost standpoint how much additional cost would that add to the program over and above what it would normally be before we got into dealing with quality?

Mr. WEBER. Given the quality factors that we have this year, we don't have a good fix on it right now; but where we are expecting to pay out upwards of \$2.5 billion.

Mr. ENGLISH. Just on agriculture?

Mr. WEBER. On crop losses. Possibly \$300 to \$500 million of that could be associated with quality losses.

Mr. ENGLISH. Is the quality—

Mr. WEBER. Simply a guess at this point.

Mr. ENGLISH. The quality under the disaster aspect of it, is this something that the Department is suggesting we extend across the board irregardless of how big the disaster may be?

If, in my county, I have a problem with the quality on a crop, is the Department now advocating that my farmers should be able to receive some kind of disaster assistance for quality problems?

After all, that doesn't have anything to do with disaster much from a natural disaster, such as a flood or an earthquake or something like that.

Mr. WEBER. Certainly the Department, I think, supports quality losses as long as those quality losses can be associated with an adverse weather factor.

If the quality losses are for reasons other than that, then certainly it is my understanding the Department would not support quality adjustments there.

But if it is weather related, certainly they would support—

Mr. ENGLISH. Irregardless of the size?

Mr. WEBER. I would have to assume that is true, yes.

Mr. ENGLISH. Thank you, Mr. Chairman.

Mr. JOHNSON. Mr. Stenholm.

Mr. STENHOLM. Following up on that, with the cotton harvest about to begin—or it has already begun in portions of the country—but you get the situation where you have quality deterioration in modules that have been harvested, because of excessive rain. Will they be covered this year for quality loss?

Mr. WEBER. As long as it can be tied to weather, yes.

Mr. STENHOLM. If it is tied to weather?

Mr. WEBER. Yes.

Mr. STENHOLM. Too much rain, quality loss?

Mr. WEBER. Yes.

Mr. STENHOLM. Next favorite subject we have been discussing, de minimis yields.

Mr. WEBER. Yes.

Mr. STENHOLM. We have an unfortunate situation here that market prices for the commodities being harvested are in the range in which it is tempting not to harvest. And we have seen situations in which those who do not harvest tend to do better financially than those who do.

The de minimis yield effort is certainly moving in the right direction. The problem that we have seen comes from nonintended incentives in the policy to abandon crops.

And we have looked at it from the standpoint of overall program operations that we all do better when a crop that can be harvested, financially feasible, is harvested.

The pressure on adjusters when you are very close to the de minimis is to go ahead and call it de minimis; and that "very close" is hard to determine because anyone that has adjusted crops knows that you can go into a 100-acre field and you can find 30 pounds in one area, 50 pounds in another, 100 pounds in another, and perhaps as much as 300 pounds in another area; and to come up with an absolute yield is difficult to do.

Have you got anything additional to share with us today regarding the subject of de minimis?

And my specific question, and I will use cotton, for example: It seems to me that if you have a 500-pound yield, 65 percent disaster, you are eligible for coverage at 325.

The point where you really get into a problem is where you have double de minimis. In other words, instead of 66, 132 pounds or less is where you really get into a fine area on this one.

And so let's take a hypothetical. You have a situation in which a field is appraised at 80 pounds. Then what happens to that farmer?

Mr. WEBER. If it is appraised at 80 pounds, the 80 pounds is counted against him as production.

Mr. STENHOLM. And he gets the value of the crop, 80 pounds?

Mr. WEBER. Right.

Mr. STENHOLM. If it is appraised at 66 pounds, what does he get?

Mr. WEBER. He gets zero production consideration for disaster purposes and can get the value of the crop as well.

Mr. STENHOLM. So he gets paid the disaster payment on the 66 plus the other 14 pounds for disaster purposes, because you have zero.

Mr. WEBER. You are talking about the 80 pounds. We are going back to the 80 pounds. I thought you were talking about—

Mr. STENHOLM. I am saying if the same farm has had an appraisal at 66, he is paid on 80 for disaster purposes.

If he was appraised at 66—

Mr. WEBER. If he was appraised at 66, we would assume—

Mr. STENHOLM. But if it is appraised at 80—

Mr. WEBER. If he is appraised at 80, we are going to consider 80 pounds of production, and that is going to be subtracted from his 325.

If it is appraised at 66 pounds, we will zero the production out, and he is going to receive deficiency payments on 325 pounds.

Mr. STENHOLM. My question is: If it is a legitimate appraisal of 80, the best judgment of the appraiser, it is 80, why would it not



be in our best interest to allow that person that goes out and harvests that 80 to get credit for the 66 pounds so that he is treated like the fella that got an appraisal?

Both of them are excellent appraisers, doing it 100 percent honest, no question about that; but no one, in their best judgments, can come within 14 pounds of appraising a 100-acre field.

Mr. WEBER. I understand where you are coming from, and we are looking at this.

Are you suggesting if we appraise it at 130, we still subtract the 66?

Mr. STENHOLM. Yes. I am suggesting to you to think about the 66; and you can say the same for wheat, for example, same words there.

Mr. WEBER. True.

Mr. STENHOLM. You have the incentive in there. We have agreed de minimis, all of those yields, will cover the cost of harvest barely; but they do.

Mr. WEBER. Right.

Mr. STENHOLM. And that is the whole purpose of it. So if you take double de minimis, at least up to that point of saying that anything appraised in that area in which the individual farmer goes out, makes a good faith effort in harvest, goes through the expenses, and it turns out that he gets 80 pounds or 70 pounds, that he would be given consideration for de minimis.

So he gets the reward—i.e., the benefit of making the effort, versus the fella that got a good appraisal. Again, both of them are honest. I am not insinuating dishonesty whatsoever.

There is a temptation out there that we are trying to get around, but I understand why we can't perhaps go up to 325 or up to 500. We will get into a cost factor.

But I would ask you to take another look at it from the standpoint of up to perhaps double de minimis.

Mr. WEBER. If I understand what you said, if we place it at 132, for instance, that we would still deduct 66 and credit 66 toward production.

Mr. STENHOLM. Provide the incentive for him to go out there and to get the crop and then see what happens, like I believe we do in the insurance side of it already.

Mr. WEBER. We will take that into consideration. Appreciate your comments.

Mr. STENHOLM. Thank you.

Mr. JOHNSON. Mr. Barlow.

Mr. BARLOW. Thank you, Mr. Chairman.

Thank you for coming down, Mr. Weber. Let me just go over some of these questions and answers that I believe came out of the Department from the Deputy Assistant Secretary for State and County Operations of the ASCS.

Is that right?

Mr. WEBER. Yes.

Mr. BARLOW. Question No. 19: When will ECP funds be allocated to the States?

The answer was: Allocations were mailed to State offices on September 23.



Can you tell me if Kentucky was included in that? And if so, how much was sent down? Do you know?

Mr. WEBER. I cannot tell you. If Kentucky had submitted a request, they should have been included in there. But I cannot tell you for sure whether they were included or not.

Mr. BARLOW. But if the State forwarded you a request, presumably something would have gone back to them?

Mr. WEBER. They would have—the initial allocation, yes.

Mr. BARLOW. Another question, going back: Is unleveed bottomland ever eligible for ECP cost-share assistance? If so, under what circumstances.

And the answer that you all provided was: Yes, provided the land is not under a flowage easement and the COC is able to make a determination that the land is not susceptible to frequent damage.

Just for the record, what is COC?

Mr. WEBER. County committee.

Mr. BARLOW. Frequent damage. I am assuming that you all have made a determination that bottomland, where it has gone on as land having been cropped but never having actually had damage during the crop season and never having applied for assistance during that crop season, even though it is bottomland, you are going to provide relief?

Mr. WEBER. We will provide relief subject to the county committee determining that it is not subject to frequent damage.

Mr. BARLOW. And you are cooperating with the county committee on that?

Mr. WEBER. Yes.

Mr. BARLOW. Can farmland that is adjacent to a river that has an annual occurrence of water overflowing the river banks on to the farmland be eligible for ECP?

And, again, you go along with the county committees on that?

Mr. WEBER. Yes.

Mr. BARLOW. One other question. The question came, we have a request for cost shares to clean out open drainage ditches due to flooding. Some of our farmers down there tried to get in and put up quick levees to hold off the river. These got breached in some instances. We have some roads down there that have gotten torn up pretty bad.

Will ECP, again, with the direction, advice of the county committees, come in and help farmers with their costs on this?

Mr. WEBER. On construction of roads and—

Mr. BARLOW. Reconstruction of roads, some portion of payment of levee construction costs where they tried to get—

Mr. WEBER. I don't believe the ECP funds will cover either of those.

Mr. BARLOW. But how about—

Mr. WEBER. The levees are covered under some funds—or can be covered under some funds that the Soil Conservation Service has, but ECP will not cover either one of those.

Mr. BARLOW. The roads or the levees?

Mr. WEBER. The roads or the levees.

Mr. BARLOW. But your information is the SCS will—

Mr. WEBER. There are some funds available under the SCS that would cover the levy portion of it.

As far as the roads, I am not certain where those funds may come from. It may well be FEMA funds that are available for reconstruction of roads.

Mr. BARLOW. And the drainage ditches, though, you will cover?

Mr. WEBER. The drainage ditches, we will help repair those. Yes.

Mr. BARLOW. And, again, the allotments that have gone out to the State at this point are just the beginning of your service here?

Mr. WEBER. We have a total of \$30 million that has been appropriated. We issued \$19 million in initial allocations.

Mr. BARLOW. And you would anticipate the next round of allocations coming when?

Mr. WEBER. As soon as we get additional requests from the States, we will respond.

Mr. BARLOW. October? November?

Mr. WEBER. I would think that is probably very reasonable.

Mr. BARLOW. Thank you very much.

Thank you, Mr. Chairman.

Mr. JOHNSON. Ms. Long.

Ms. LONG. I have no questions.

Mr. JOHNSON. The Chair will recognize members for additional questions if it is seriously important for those members to pursue additional questions; but we do want to expedite this hearing as much as possible.

Mr. Peterson.

Mr. PETERSON. Mr. Chairman, just one thing that I meant to ask. One of my farmers was talking to me about the possibility of—and I don't understand this completely—but when the recourse loan expires, which I guess is next May or whatever, it is 9 months—is that it?

Mr. WEBER. Nine months, yes.

Mr. PETERSON. Whether there is a possibility to extend the loan. I think his point was that he was trying to be able to keep the crop until after next year's crop because he was going to try to blend it and maybe get a better price.

Now, we have evidently done that with 1992 crops?

Mr. WEBER. We have extended nonrecourse loans. I don't know that we have extended recourse, Mr. Peterson. That is something that we certainly would look into.

Mr. PETERSON. That was only nonrecourse?

Mr. WEBER. It was only nonrecourse that was extended for 6 months.

Mr. PETERSON. So any damaged crop wouldn't have fallen under that?

Mr. WEBER. That is correct.

Mr. PETERSON. But it is something that you—

Mr. WEBER. It is something I will go back and look at.

Mr. PETERSON. I don't know how many people would be in this circumstance, but it seems to make some sense to give them a little more flexibility.

I don't know what their circumstance is, so if you can look into that I would appreciate it.

Mr. JOHNSON. Are there other members with questions of some urgency?

Mr. MINGE. Mr. Chairman, I would like to ask, in calculating the maximum combined crop insurance and disaster payments, will you use the yield figures that are in place for Federal crop insurance as being the production on the farm, that is, normal production, or use the yield figures that ASCS assumes to be the production baseline on the farm or the fields?

Mr. WEBER. We will use the ASCS yield.

Mr. MINGE. Is that statutorily required?

Mr. WEBER. That is statutory, yes.

Mr. JOHNSON. Mr. Pomeroy.

Mr. POMEROY. I have a question for Mr. Witt.

Farmers opting to enroll in 0/92, as late as September 16, burned the crop off the field, have gotten ready for next year, written off this year with the assistance of that program.

Some farmers have contacted my office with the concern that, given wet field conditions, there is no way they are going to be able to get their crop off, but they still have not been allowed by the Federal crop insurance adjusting procedures to zero out their crop so that they might burn their fields, dry up the ground a little, prepare for next spring; and they are worried that without this type of preparation activity during these critical weeks, they are going to be in tough shape for 1994 as well.

Can you respond to that concern?

Mr. WITT. Well, since we are essentially a production-based program, we are waiting for the crop to either deteriorate to the point that it has no value or that we can make an accurate loss adjustment appraisal. And as soon as that occurs, the adjusters are free to adjust and make final payment and so on.

My understanding of the situation is the crop still has some potential. There cannot be an accurate assessment made at this point. And so they have deferred appraisals and a determination of loss payment until either the freeze gets it, as many people believe may happen, or they actually can harvest.

They can go ahead and destroy it if they would like to accept the appraisal. We are allowing them to destroy and leave strips so we can make an appraisal for the strips and, if they can, get in and plow down and destroy the crop.

Mr. POMEROY. In particular, in areas like I represent, North Dakota, the window is going to be very small in terms of concluding the loss is complete and an opportunity to do the necessary fieldwork before the winter weather conditions set in.

I would just strongly urge you to consider that as you look at these procedures.

Mr. WITT. We will. And we have contacted the companies as well as our own people, and we have an adequate loss adjustment force; and we are prepared to move more loss adjusters in if needed to timely get in there and take care of the situation. But we will make note of that.

Mr. POMEROY. Particularly with grains in North Dakota is that standing as late as September 28, you have to be close to zeroing that out; wouldn't you say?

Mr. WITT. I would say, yes. On some of those they have to be reaching that window where we can make some decision very quickly.

Mr. POMEROY. Good. So I can tell farmers contacting my office that they should recontact their adjuster in light of your comments?

Mr. WITT. Yes. I think as soon as they know what they want to do with the crop and it has reached a point where we can make an accurate determination, we will be happy to appraise it and release it for them.

Mr. POMEROY. Will your determination contemplate whether or not they can realistically get that crop off?

Mr. WITT. That is taken into consideration when they do the appraisal.

Mr. JOHNSON. I want to thank this panel for your attendance and contribution to the discussion here today.

Before calling the second panel, if it would be at all possible for Ms. Martinez and Mr. Shipman to remain in the room so that when we go onto Mr. Wessel, who is with the Food and Drug Administration, that there may be some joint concerns of some members; and it might be helpful if the two of you, if you possibly could remain.

But Mr. Weber and Mr. Witt, we very much appreciate your contribution today.

The second witness is Mr. John Wessel, who is the Director of the Contaminants Policy Coordination Office of the Food and Drug Administration of Rockville, Maryland.

And, Mr. Wessel, we appreciate your attendance with us today. And if you could introduce your associates as well for the record.

Mr. WESSEL. Thank you, Mr. Chairman. Mr. Philip Derfler of our Office of General Counsel; Dr. Terry Troxell, who is from our Center for Food Safety and Applied Nutrition; and Dr. Daniel McChesney from our Center for Veterinary Medicine. I think I have covered everyone.

Mr. JOHNSON. Thank you, Mr. Wessel.

And as with the first panel, you should feel free to summarize any statement that you have, and your full written statement is accepted into the record of the subcommittee. But we would ask you to proceed in whichever manner you are comfortable.

And you may proceed, Mr. Wessel.

**STATEMENT OF JOHN WESSEL, DIRECTOR, CONTAMINANTS POLICY COORDINATION, OFFICE OF REGULATORY AFFAIRS, FOOD AND DRUG ADMINISTRATION, PUBLIC HEALTH SERVICE, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, ACCOMPANIED BY TERRY TROXELL, DIRECTOR, DIVISION OF PROGRAMS AND ENFORCEMENT POLICY, OFFICE OF PLANT AND DAIRY FOODS AND BEVERAGES; DANIEL G. MCCHESENEY, ACTING CHIEF, ANIMAL FEED SAFETY BRANCH, OFFICE OF SURVEILLANCE AND COMPLIANCE, CENTER FOR VETERINARY MEDICINE; AND PHILIP S. DERFLER, ASSOCIATE CHIEF COUNSEL FOR FOODS, OFFICE OF GENERAL COUNSEL**

Mr. WESSEL. Thank you, Mr. Chairman.

The mycotoxins that I will discuss today are vomitoxin and aflatoxin. Both of these substances are toxic. Both may be affected by adverse climatic conditions, and both are known to be contami-



nating grain grown in the Midwest this year and possibly elsewhere.

The first mycotoxin I will discuss is vomitoxin, which is produced by various mold species that can be associated with the pink scab disease affecting grain.

The molds thrive in cool, wet conditions that occurred in the Upper Midwest this past year. This resulted in some wheat from that area becoming contaminated with vomitoxin.

The agency first issued guidance to State and industry officials in 1982 that described levels of vomitoxin in wheat and wheat products that we believed at the time would not present a public health hazard.

Since then, additional data have become available; and on the basis of this new information, FDA updated its advisory levels for vomitoxin in wheat products intended for human consumption. We also updated the advisory for vomitoxin in wheat and grain when used as animal feed.

We believe that this updated advisory continues to protect the public health, while at the same time provides the necessary guidance that we believe the States and industry in the Upper Midwest need in order to deal with this specific problem.

The advisory levels were issued by FDA on September 16, 1993, and are appended to my prepared statement.

I would like to now briefly turn to the situation surrounding aflatoxin. Aflatoxin is also a mold-produced toxin. It can occur in food crops that are under stressed conditions, such as drought, followed by extremely wet or heavy rain falls.

It has been found in various kinds of food, and corn, in particular, is susceptible—highly susceptible to aflatoxin contamination. Aflatoxin is a known carcinogen in laboratory animals, possibly a carcinogen in humans, and can cause severe liver damage when ingested at high levels.

Based on our current understanding of aflatoxin toxicity, we believe that our longstanding action level of 20 parts per billion for aflatoxin in corn is sufficient to protect the public health and particularly humans.

We also have an identical action level for aflatoxin contaminated corn when intended for dairy cattle and for immature animals. The available information also indicates that other kinds of food-producing animals can be exposed to higher levels of aflatoxin, and accordingly we have adjusted our action levels to accommodate this information. A list of the action levels that are current in effect for aflatoxin in corn are appended to my prepared statement.

Let me turn to the situation in Missouri. On September 10, 1993, the Missouri Department of Agriculture wrote FDA requesting guidance in dealing with what the State believes to be a serious problem affecting its 1993 corn crop with aflatoxin.

The State asked FDA to support Missouri's use of blending. Let me explain what blending is. Blending involves the mixing of aflatoxin contaminated corn with noncontaminated corn to produce a blended mixture of corn that could contain a level of aflatoxin below some level that would be acceptable for feed use.

The Federal Food, Drug, and Cosmetic Act, which we are responsible for enforcing, clearly prohibits blending as a way of removing

an adulterant from food; therefore, FDA under normal circumstance, would not condone the use of blending.

However, we felt that the situation in Missouri is not normal; and this is due to the fact that this past summer they suffered some very severe climatic conditions—the heavy rains, the floods, the drought—all of which are conducive to the production of aflatoxin.

So in responding to Missouri's request for guidance, we first stated that the FDA action levels that are in effect should serve as a primary means of controlling aflatoxin-contaminated corn. And we also assured the State at that time that we would fully support their use of these action levels for controlling aflatoxin-contaminated corn in the State of Missouri.

According to the State, however, Missouri farmers could still suffer major price reductions in the sale of corn that may contain aflatoxin and that the FDA action levels themselves were not providing the necessary relief that they felt the farmers were entitled to.

Accordingly, we did write the State of Missouri and told them that if proper precautions are maintained, FDA likely, would not object to the use of blending for controlling this particular problem.

This letter was sent to the State of Missouri, department of agriculture on September 16, 1993.

That closes my opening statement, Mr. Chairman. My colleagues and I will be happy to answer any questions that you may have.

Thank you.

[The prepared statement of Mr. Wessel appears at the conclusion of the hearing.]

Mr. JOHNSON. Thank you, Mr. Wessel.

Were you, or are you, involved in any type of interagency working group, either formally or informally, that worked on the updated advisory levels on vomitoxin?

And do you think you are equipped to deal with emergency situations like this?

There has been some question about the length of time that it took to react to this current situation.

Mr. WESSEL. We are experienced in dealing with food contamination problems. I think, you have to understand, that is our primary mission in enforcing the Federal Food, Drug, and Cosmetic Act. Our primary concern in all cases is the protection of the public health.

At the same time, we are frequently confronted with emergency situations, such as that occurred this year, both in the Upper Midwest as well as in Missouri; and I think we are mentally geared to deal with those kinds of situations.

At the same time, we do not work in a vacuum. We certainly cooperate with our sister regulatory agencies, such as the U.S. Department of Agriculture. We also have immediate contacts with Government researchers in other countries. And we do have close and very active cooperation with State agencies, as well as industry.

Mr. JOHNSON. At this point, you see no need to formalize those relationships more so than they already are?



Mr. WESSEL. We have a memorandum of understanding with the Federal Grain Inspection Service. And the terms of this agreement, this working arrangement, I think are very conducive to the kind of activity we had this past summer concerning the vomitoxin and aflatoxin situations.

Mr. JOHNSON. I believe you are aware of a letter received by my office from a gentleman in Iowa whose company produces bakery mixes utilizing a number of grains in various forms. And I am wondering if you are seriously considering the points that he raised with Dr. Troxell regarding the further refining of the allowable limits to take into account the use of milled products in further combination with other ingredients?

Mr. WESSEL. We just received this letter as well, Mr. Chairman. And certainly we are going to give this gentleman's concerns full consideration. And at the moment, I cannot say what our final decision may be.

But certainly we will take everything he raised under advisement.

Mr. JOHNSON. Mr. Emerson.

Mr. EMERSON. Thank you, Mr. Chairman.

Mr. Wessel, I want to commend you and Mr. McChesney for your very prompt and expeditious consideration of the appeal made to you by Missouri's director of agriculture.

We felt that you handled this matter very effectively, and a lot of corn farmers in Missouri are grateful to you for your good attention to the matter that—it is a matter of livelihood to a lot of people and thought it was handled about as well as it could have been.

We thank you.

I wonder how widespread you think the aflatoxin contamination problem is. Is it just Missouri, or is it going beyond there? And what is the potential for it to spread this year and next year?

Mr. WESSEL. At the moment, it is hard to say exactly what is the full extent of the problem. The Midwest typically does not pose a problem with aflatoxin in corn. The aflatoxin situation involving corn is mainly focused in the Southeastern part of the United States.

For this year, it appears, at the moment, that the problem with aflatoxin in corn, at least in the Midwest, is limited to the boot heel area of Missouri.

From what I understand, the harvest is not complete in some of the States beyond or further north of Missouri, to ascertain whether or not, in fact, a problem does exist. So we are going to keep surveillance on the situation, keep an eye on what is going on, maintain our contacts with State officials and the industry, and react accordingly.

Mr. EMERSON. It is interesting, in the context of what you are saying, there the boot heel of Missouri is more related to the Southeastern part of the United States than it is to the Midwest.

The boot heel sort of—we are on the border line there, and they are considered—that region of my district is considered Midsouth, whereas north of there is Midwest; and you look at a map, and what you just said makes a lot of sense.

As I have been inquiring as to what the thought has been as to what was the specific cause of this year's particular problem, I was

told it was high humidity in a drought condition; and does that ring a bell? Does that sound accurate?

Mr. WESSEL. I think you just described, Mr. Emerson, the conditions that are conducive to aflatoxin. But I think I would add that following the drought, then you suddenly are confronted with some heavy rainfall. You need the moisture. High humidity, in some cases, could be sufficient. But I think the heavy rainfall usually guarantees it.

Mr. EMERSON. This is the problem that is now occurring. But when it first came upon us, we hadn't had any rainfall. We were having the flood, but we hadn't had any rainfall.

Mr. WESSEL. But the area involving the aflatoxin contamination of corn was not associated with the flood.

Mr. EMERSON. That is correct.

Mr. WESSEL. But the drought with the high humidity certainly produced conditions that are ripe for the mold growth and then followed by aflatoxin production. You must have the mold first, and this is what usually the mold thrives on, the drought and when the corn is under stress is the way we normally describe it.

Mr. EMERSON. Thank you very much.

Mr. JOHNSON. Mr. Peterson.

Mr. PETERSON. Thank you, Mr. Chairman.

Mr. Wessel, were you here last week when we were talking about this amendment of mine?

Mr. WESSEL. No, sir. But several members of the panel were.

Mr. PETERSON. I just want to get this clarified. You evidently have the authority to test for this vomitoxin.

Mr. WESSEL. That is correct.

Mr. PETERSON. But the way it works, in fact, is the Grain Inspection Service tests and you accept their test, once you set the levels. Is that how it actually works?

Mr. WESSEL. Again, it depends. We do engage in our own direct sampling and testing of grains—wheat, barley, corn, and so forth.

Mr. PETERSON. How does that work?

Mr. WESSEL. We have field investigators located throughout the country. We have a number of district offices where we do have both the investigator as well as the laboratory capability. And as part of their normal duties, they can collect samples of any type of food product for analysis by one of our laboratories.

And we do have the capability to analyze for a variety of mycotoxins. We also have, as I mentioned earlier, a working agreement with the Federal Grain Inspection Service. And recently, under the terms of that agreement, FGIS did provide us with some random samples that they had been collecting throughout the country for testing specifically for vomitoxin.

Mr. PETERSON. Well, what we are trying to accomplish was to set up some process whereby the grain coming into this country would be tested for vomitoxin.

And the question became, if we did that, are we going to cause you to have to take on some duties that you maybe can't perform or you don't have the people; or how are we going to get these folks up to the border and so forth.

So what I need to find out is: Do you folks have any problem with the Grain Inspection Service people testing at the border.

Do you have any problem with that?

Mr. WESSEL. You mean a problem with—

Mr. PETERSON. With them doing this.

Mr. WESSEL. The Federal Grain Inspection Service being involved?

Mr. PETERSON. Yes.

Mr. WESSEL. I personally have no problem with that. We do have the authority to sample imported foods from any country.

But if it is the desire of this subcommittee that FGIS should be involved as well, fine. I have no problem with that.

Mr. PETERSON. You don't have the resources, if we put in a bill, to say that the FDA had to inspect all of the grain coming in? You wouldn't have the resources to do that, would you?

Mr. WESSEL. I am not sure if the Federal Grain Inspection Service also has the resources. But this is something we would have to take under advisement in terms of what you would specifically introduce, by way of language, in the bill.

Mr. PETERSON. From what we know, 85 percent of the grain that comes in is already inspected by the countries that send it in, so—what we are requiring in this—have you seen my legislation?

Mr. WESSEL. Yes.

Mr. PETERSON. What we are requiring is that they do one additional test, that is, for vomitoxin; and then that would be accepted.

So all we are talking about is 15 percent of the imported grain and trying to figure out some way—an efficient way—to get that tested without causing a big problem. And it just seems like the most logical way to do it would be to have the Grain Inspection Service probably delegate this to the States like they do with a lot of things and have them test at certain border points.

What we are trying to do is accomplish this in a way that we don't get tangled up over in the Energy and Commerce Committee. I have talked to Mr. Dingell, and his concern is that you folks be happy. So I am trying to work this out so that you are—

Mr. WESSEL. Again, we have excellent cooperation and working relationship with the Federal Grain Inspection Service, and we do talk to each other, and we do cooperate with each other. We are not in what I would call a turf battle.

Mr. PETERSON. Do you have a position on what my language—

Mr. WESSEL. No, sir. I think—like I said earlier, any bill of this nature would need to have the full agency consider it.

Mr. PETERSON. How long will that take?

Mr. WESSEL. Our turnaround time on a bill introduced by Congress is fairly quick.

Mr. PETERSON. The bill was introduced this morning. We, in the last week, got an indication from Mr. de la Garza that he would consider this bill on a timely basis.

But I do think we need to get you folks and FGIS to take a position or give us your thoughts about it in order for us to move ahead. So the sooner you can do that, the better.

You can do that within a week or two?

Mr. WESSEL. I can not make a promise as to how soon we could comment.

I have to point out that for any type of legislative initiative, FDA's comments would have to go through the Department of Health and Human Services.

But I can assure you that FDA would certainly expedite its review considering the circumstances.

Mr. PETERSON. Well, we would appreciate that, because we think that there is a lot of this grain—and we would like to get a process set up so we can find out just what is coming in and know what is in it and so forth. If you would cooperate and move on that, we would appreciate it.

[The information follows:]



## DEPARTMENT OF HEALTH &amp; HUMAN SERVICES

Public Health Service

Food and Drug Administration  
Rockville MD 20857

NOV 1 1993

The Honorable Tim Johnson  
Chairman, Subcommittee on  
General Farm Commodities  
Committee on Agriculture  
House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

As requested by Mr. Peterson during the hearing, FDA is preparing comments on H.R. 3154 which would require official inspection and testing of all grain imported into the United States. FDA's bill report, as Mr. Wessel indicated in his testimony, will need to be cleared by the Department of Health and Human Services before being routed to the Subcommittee.

If we can be of any further assistance, please let me know.

Sincerely,

Carol R. Scheman  
Deputy Commissioner  
for External Affairs  
and  
Acting Associate Commissioner  
for Legislative Affairs

Enclosure

cc: The Honorable Bill Emerson  
Ranking Minority Member



Mr. JOHNSON. Mr. Volkmer.

Mr. VOLKMER. I have no questions.

Mr. JOHNSON. Mr. Pomeroy.

Mr. POMEROY. Mr. Wessel, first of all, I want to commend the FDA for their review activities. When the crop conditions of the 1993 growing season were indicated, I spoke with both the FDA team reviewing the vomitoxin standards on wheat for animal consumption and food safety and was impressed that both of them were working as quickly as possible, often dealing with circumstances where there was not as much data directly relevant to either supporting the standards or supporting changing the standards as they might have liked.

My question is, I think, in other words, the FDA team has moved as quickly as possible in light of what they had available. I also think their review was cognizant of the tremendous attention placed on the marketplace on the results of their work.

The only fault I would have is that there wasn't more assembled data in light of the predictability of a vomitoxin condition that might have led the FDA to look at this earlier than 1993, in light of the fact that the 1982 standards were dated and based largely on Canadian research.

Do you have an opinion on that? It isn't a telling point.

In other words, the 1993 revisions were appreciated and developed in a timely fashion. They might have been even more timely had they been developed before 1993 I guess is my point.

Mr. WESSEL. Well, one quick comment is that it is difficult to anticipate what the weather is going to be like, and this is what we are up against when it comes to any type of mycotoxin problem affecting grain.

You can't really speak in the springtime as to what the weather is going to be in the summer. And we can only react to a situation that has occurred as opposed to predicting what might occur.

Mr. POMEROY. Correct. But that gets to my next point. Vomitoxin, because it is produced from a scab that occurs on the wheat when there are particularly cool and wet growing conditions, is a recurring condition.

In fact, one of the reasons that the data supporting the 1982 standards comes from Canada is that this is a condition found more commonly in the northern growing latitudes.

Is that correct?

Mr. WESSEL. That is correct.

Mr. POMEROY. That might mean that if the United States has a vomitoxin problem, Canada might have a worse vomitoxin problem in wheat that they are producing.

Is that correct?

Mr. WESSEL. At this point, I am not willing to say one way or the other as to which one might be the worse in terms of the degree or level of incidence of vomitoxin in wheat. It is just too early to tell.

Mr. POMEROY. But at least it ought to be a question relative to Canadian grain coming into our country not subject to inspection for vomitoxin. There are quality questions that might attach to that grain.



Mr. WESSEL. It is my understanding—and we have been in very close contact with our Canadian counterparts, and according to the information not only this year but in previous years—that we have received from them is that all grain that Canada exports to the United States is inspected before exportation.

Mr. POMEROY. No, that is not the information that I believe to be the case. I think there is uninspected Canadian grain that comes into this country. And that is the thrust, really, of the legislation introduced by Congressman Peterson and myself.

I don't have a final question. I have a final comment. There were two teams within FDA that studied the vomitoxin problems. One of them was dealing with the veterinary—

Mr. WESSEL. We have two centers that have responsibility in this regard. One is the Center for Food Safety and Applied Nutrition. Their primary responsibility is the human food aspects of the situation.

And the other side is the Center for Veterinary Medicine which has responsibility for the safety of the animal feeds. One has safety responsibility for food; one has safety responsibilities for animal feed.

Mr. POMEROY. My discussion with the food safety people doing the research in the Food Safety Division, left me with the impression that they would find helpful data that tracks what happens to vomitoxin during the milling process.

North Dakota State University, at my request, did an initial test; and the results show that vomitoxin concentrations are dramatically reduced in the subsequent flour that is produced. Vomitoxin concentrations tend to grow in the by-product in the milling process.

We are now moving forward in developing a more substantial test record at a pilot and commercial level of milling supporting this conclusion. I think that supports the work of the food safety team in removing vomitoxin maximum limits on the raw product and rather concentrating on vomitoxin limits in the refined food product.

So, again, I am very favorably impressed with the work done by FDA on the vomitoxin issue in the last month.

Mr. JOHNSON. I want to thank this panel unless there are additional questions from any members of the subcommittee, I want to thank members of this panel for your contribution to our hearing.

And, again, your full statements and answers are on the record. I want to thank you.

The third panel consists of Mr. Roger Rix of South Dakota on behalf of the National Association of Wheat Growers, Washington, DC; Mr. Pete Kappes of Ada, Minnesota, representing the National Association of Wheat Growers; Ms. Dixie Hendricks, who is a member of the board of directors, National Family Farm Coalition, and Dakota Rural Action of Corona, South Dakota; Mr. Larry Diedrich, who is president of the American Soybean Association of Elkton, South Dakota; and Mr. Robert Gebhards, Tarkio, Missouri, on behalf of National Corn Growers Association of Washington DC.

If those individuals would come forward. Now, I appreciate that everybody has busy schedules, but I know Mr. Diedrich in particular has an obligation coming up fairly soon. And if there are others

of you who have fairly urgent time constraints, if you would let me know, and we may take your testimony out of order. Otherwise we will proceed.

Ms. HENDRICKS. I also have a flight back.

Mr. JOHNSON. You have the same? You have a what?

Ms. HENDRICKS. A 2:15 p.m. flight back.

Mr. JOHNSON. All right. We will keep that in mind.

Mr. Diedrich, because of your urgent need to move along and catch a flight, we will take things out of order and begin with your testimony.

And again, to members of this panel, we thank you for being here and also accept your full written statements into the record. And to the degree that you want to summarize or otherwise briefly restate your statements, do whatever you feel most comfortable with.

And what we will do is go through the testimony of all members of the panel and then reserve questions from the subcommittee at the conclusion of all panel members' testimony.

Mr. Diedrich, begin.

#### **STATEMENT OF LARRY DIEDRICH, PRESIDENT, AMERICAN SOYBEAN ASSOCIATION**

Mr. DIEDRICH. Thank you, Mr. Chairman. I very much appreciate being invited to this hearing, and I am glad that you took this opportunity to have the hearing.

I will condense my remarks. Unfortunately, what I will be condensing out is all the "thank yous" for all the work that you folks have done and being good listeners and being very responsive to the needs of the farmers in rural communities because of this huge disaster we have had this year. It has been very much appreciated.

What I would like to touch very briefly on is a couple of ideas that have surfaced through our association of things that we might be able to improve on yet and things we need to continue to be more aware of.

One thing that we talked about and we visited a little bit with the Secretary on is the fact that, in the budget process, what you folks—and particularly you, Mr. Chairman—were very fortunate to eliminate the origination fee on the soybean loan program; and that is being done and will be done for the 1994 and beyond crops.

A concern that we brought up is the fact that farmers are going to be very much in need of a lower interest loan program. The precedence is already set for the 1994 and beyond crop.

Is there a possibility that we can extend that elimination of that fee for this 1993 crop? So farmers, rather than inventing a new way to get low-interest loans out to them, we can at least have a competitive loan program through the soybean owned program, one that we will be seeing in 1994 and beyond, once again, including that in 1993.

We also know that the full extent of the crop loss will not be known until harvest is complete. However, based on our assessments to date, it is apparent that the crop damage is highly irregular, both between farms and on individual farm tracts, particularly in the Midwest. In some cases, production on entire tracts have been lost due to prevented planting or flooding.

Under the current regulations, producers with complete losses on individual tracts may not be eligible for Federal assistance if total production on their farms does not trigger the disaster threshold.

In ASA's view, individual tracts, rather than farms, should be used to determine eligibility for disaster aid in the event of catastrophic losses. This is very much a case in our particular area, and I would like to say, I am sure, in a large part of the area of the Midwest.

Another area of concern for producers affected by this year's disaster is compliance with conservation plans. Many producers in the States affected by heavy rains and flooding will be unable to comply with requirements of the approved conservation plans. In some instances, compliance is simply not possible. In others, compliance is possible but probably not affordable.

ASA feels it is important that Congress and USDA take these unusual circumstances into account by allowing the local SCS offices to make case-by-case adjustments for producers trying to meet conservation plan requirements.

And to clarify that, we do not want to see this as a loophole for farmers to get out of the conservation plans, but more on a case-by-case basis where, due to these circumstances, that they can be looked at and we can use some common sense in that approach.

ASA also hopes that Congress and the administration will respond to the magnitude of these losses and demand for disaster assistance to move quickly to reform crop insurance.

We are pleased Secretary Espy has formed a crop insurance reform task force to address the obvious need for change in the current program. Soybean producers have long believed that crop insurance needs a major overhaul. In particular, soybean producers should be eligible for insurance for prevented planting, as is available for program crops. ASA will participate actively with the Secretary's task force, and we will work with any Member of Congress who is interested in reforming the current system.

Another area vital to agriculture is rebuilding of our marketing infrastructure. ASA is concerned about the ability of many producers to bring their crops to market and the impact these dislocations will have on the local price for soybeans.

States and local governments do not have the resources needed to respond to these problems. With harvest approaching, Federal assistance is needed immediately to remove transportation bottlenecks, to repair damaged roads, bridges, and storage facilities. This is an item that we had a resolutions process at our Denver Expo, the first part of August, that received a lot of attention. It is very much a concern of a large part of the Soybean Belt.

I have talked briefly about a few things that we think would probably be necessary and good improvements to what has been done already. When I look at the whole scenario, I have some concerns in two different areas, two different groups of farmers.

One, is the farmer that financially, is not going to be able to make it through this year, probably because he wasn't very strong or as strong as what we like to see going into this year. And that is very unfortunate.

Probably where my concern—when you look at total agriculture, my concern is for a second group of farmers. Those are the ones

that can probably afford to make it through this disaster, those that may be better educated, but those that are able to get another job somewhere else as a good paying job, the people that are the entrepreneurs in agriculture, the real leaders of the industry. And when they come back to make the decision of, should I continue on farming, and we keep—we look at what do we have in store for us.

Whenever I come out here, I don't ever see anybody saying, how much more money are we going to have for agriculture and farm programs? We realize that is a downhill sling. We understand that our Federal crop insurance program is fairly inept and is not doing what it needs to do.

We also understand, as I come out here, that we are going to be more and more regulated as environmentalists and so on take a little more and more control of our farms.

And then last, the salvation to all this is that we are going to open up market opportunities. Farmers are going to live off the market of the world, and that is going to be our salvation.

And now I don't know what the feeling of many of your committee members are, but I get the feeling that even in the Agriculture Committee, we don't have strong support for opening up those markets such as NAFTA and some of the other things.

And when I go out in meetings this year, which I will have a chance to visit with farmers across the country, and these particular types of farmers that ask me, What do we have to look forward to? Why should I stay in farming past this year? I am going to have a very difficult time in answering that if we don't at least open up some markets.

And I think we need to be cognizant of that. I think it is a question—and why I ask that question of you folks on what kind of good answer I can give to those folks, is a question that I have to look in the mirror and ask myself from day to day.

With that, I appreciate the time you have given to me today. I appreciate all the support you have done for agriculture in the past and continue to look forward to working with you in the future.

Thank you.

[The prepared statement of Mr. Diedrich appears at the conclusion of the hearing.]

Mr. JOHNSON. Thanks, Mr. Diedrich.

Mr. Rix.

#### **STATEMENT OF ROGER RIX, VICE PRESIDENT, SOUTH DAKOTA WHEAT, INC.**

Mr. RIX. Thank you, Mr. Chairman, and members of the subcommittee.

I am Roger Rix, vice president of South Dakota Wheat, Incorporated, also a farmer of wheat, barley, soybeans, and so forth in northeastern South Dakota.

This past year of 1993 was a very difficult year. We started out with positive moisture situations, a good crop start throughout the growing season. We ended up having one dilemma after another and particularly with the wet season toward the end and trying to get our fields harvested.



Besides the harvest problems, we end up with scab, head blight, fungal infections that we have, and we have been talking about for the last 2 hours here.

Besides the scab and the vomitoxin, we end up with a marketing problem. I know several producers in my area that had made-over contracts for profitable levels of wheat at \$5 plus a bushel; and by the time they harvested it, with the standards that were imposed at that time, looking at having to buy their contracts back because they were unable to meet the standards of 40 to 50 cents a bushel and not being able to fit the contracts—now, with the standards being changed—wouldn't be able to fit, which caused a tremendous hardship for many producers.

The marketing is the thing I would like to stress beyond my written statement. I do have further written testimony from my local cooperative elevator of the problems that they incurred this past month with the marketing of a 26-car unit train, and I would like to submit some copies of that as an attachment to my prepared statement.

Mr. JOHNSON. Without objection, it will be received into the record. We will stay another minute or two. That is the last call for a vote. It is a fairly important vote on the floor. Mr. Peterson is going to be coming back, and we are going to minimize the lost time here because we realize that everybody is on time constraints. And we want the testimony to be taken into the record.

I think maybe with that, with that second bell, that what I will do is recess the subcommittee right now, and I will authorize Mr. Peterson, when he comes back, to begin chairing the subcommittee. Then Mr. Emerson and I will be back and others as well.

We want to minimize the loss of time but still take care of this vote. So if you will bear with us, we will recess the subcommittee now for a very short period of time until we can come back after this vote.

Thank you.

[Recess taken.]

Mr. PETERSON [assuming chair]. The subcommittee will come back to order.

Mr. Rix.

Mr. RIX. Thank you, Mr. Chairman.

As I just got through submitting additional testimony from a local cooperative elevator of the marketing problems we incurred this past month with marketing our Spring Wheat, I would like to quickly summarize for your information and for the benefit of the record what actually happened and what we are looking at.

This is a situation where our cooperative marketed—or loaded a 26-car unit train of wheat. The actual bids quoted that day were from \$4.81 to \$5.21 a bushel of No. 1 Spring Wheat. And of this unit train, there was 22 cars of 1992 crop wheat, four cars of 1993 wheat.

The opening bid was actually 30 cents less than a low, which was \$4.51 per bushel. Our cooperative rejected the bid, and they ended up with getting a bid of \$4.96 contingent on good vomitoxin levels. These results—they had results done on a five-car composite—came back as negative.

The purchaser, which was a large grain company, came back and demanded the test be run on an individual car basis, which was late on a Friday afternoon, which was impossible at that point. So our cooperative ended up getting demurrage charges at that point.

They had to try to resell it on the next Monday. The market had already dropped 15 cents per bushel, and the tests were also run. The vomitoxin tests were run by the same company as was done before on a single car.

The commission firm offered 40 cents less than what they had on the Friday contingent, now worrying about the vomitoxin test. When the results did come back, the tests were 3.2 parts per million, which was actually over the standard of two parts. They offered then 70 cents less.

Our cooperative rejected that offer and had the train reprobed. The train still graded No. 1, came back on single cars at 1.3 parts per million. At that point, the No. 1 Spring Wheat was \$4.73 to \$4.93 per bushel. The first bid was \$4.35 a bushel.

We refused the bid and continued to bargain back and forth and finally ended up with \$4.67, which we incurred over a \$3,000 demurrage charge and received 29 cents a bushel less than what we had originally felt we should get, which amounted to \$25,520, close to \$29,000 on that actual unit train.

Two things I would like to point out with this is the fact that the No. 1 wheat market is very unstable, offering huge discounts on very unreliable tests, and also the fact, if you trace the grains as they go through the process, you will find—I am sure you will find that the wheat ends up at the same place.

And so that is one point I would like to make, that we are very concerned in how the marketing of our products is being done, and also the point that was made earlier that scab does happen every year and there is vomitoxin grains every year. As for this, it was 1992 grains.

One other point I would like to make—again this is not in my written statement; I will make it short and brief because I know everybody is on time restraints—we are looking at deficiency payments on wheat being figured on the actual selling price of grains.

In our particular area—and I think you will find it in the whole Spring Wheat areas—that the grains are going to be cleaned and tried to process—or sold in a manner that would warrant the best dollars per bushel.

In other words, in particular places what we are doing ourselves, we are cleaning our wheat and we are able to market our wheat \$1 more a bushel. But we are actually cleaning 20 to 25 percent of our product out. So our net is probably in the neighborhood of 30 cents a bushel over what we would have being as how we have to sell our clean out as screenings.

How is that deficiency payment going to fit? We are selling our—we actually are selling our products for less. The total volume is netting us less dollars than what in actuality the deficiency payment is going to show us. We are selling 80 percent of our crop for \$1 less—for a \$1 more than we would have if we would have sold it otherwise. So the 20 percent is sold as screenings or at \$30 a ton, which is only 90 cents a bushel.



It does figure out for us dollarwise to be in our best interest, but it is not \$1 a bushel. And that is another point that I think that this committee needs to address or the Department of Agriculture when they are calculating deficiency payments. They need to take that into consideration also.

At this point I will close. You have my written testimonies; and without being redundant, I will let someone else have the chair.

[The prepared statement of Mr. Rix appears at the conclusion of the hearing.]

Mr. PETERSON. Thank you very much, Mr. Rix. Your statement will be made a part of the record, and we appreciate you being with us today.

Next we have from my district Pete Kappes, who is also representing the National Wheat Growers.

Welcome to Washington and summarize your statement or whatever you want to do.

Mr. KAPPES. Thank you very much, Mr. Chairman.

### **STATEMENT OF PETE KAPPES, MEMBER, MINNESOTA ASSOCIATION OF WHEAT GROWERS**

Mr. KAPPES. Thank you for the opportunity to testify. My name is Pete Kappes, and I farm near Ada, Minnesota; and I represent the Minnesota Association of Wheat Growers, MAWG.

The waterlogged, disease-burdened 1993 growing season may be the biggest crisis to hit the Northern Plains wheat growers since the 1988 drought which comes to mind, and even then there are no price discounts for our production.

This year we needed special equipment to get in the fields to harvest the wet, soggy ground, tracts; and in some cases the harvest was completed with a matchbook. Many farmers were looking forward to a good wheat crop in early July; however, rains during flowering season in July resulted in severe scab, and the scab produced the vomitoxin.

This year Spring Wheat production in Minnesota was estimated at 86 million bushels earlier this month, which would be 38 percent below last year's 137 million bushels. The average wheat yield in Minnesota this year is estimated at 35 bushels per acre, compared to a 50-bushel yield last year. We expect final wheat production and average yields in Minnesota to slip even further than these estimates.

Virtually all wheat in Minnesota was affected by scab and vomitoxin to varying degrees. Some growers had minimal scab damage, others had to zero out their wheat because of it. Some growers had wheat that tested under two parts per million for vomitoxin while others had double digit vomitoxin levels.

The MAWG estimated last month the wheat yield losses of 30 percent from expected production will result in \$130 million in losses to wheat growers in Minnesota.

Wheat quality discounts due to scab and vomitoxin will result in an additional \$130 million lost income to farmers. Total projected wheat losses of \$260 million are certain; and by the time additional abandoned wheat acreage and quality discounts are added up, total losses will likely exceed \$300 million.

As I mentioned before, some farmers in Minnesota have turned to burning their failed wheat acreage to clear ground for next year. This is one of the most difficult things that a farmer will ever have to do. And I gleaned a picture from one of the local agricultural publications showing the burning of a field.

Panic over scab and vomitoxin hit the grain marketing system early during the harvesting season and some elevators stopped taking wheat all together. Early on there were highly variable grain discounts at grain elevators. There were discounts for total damaged kernels, including scab and for the vomitoxin. Lighter kernels caused by the scab generally resulted in wheat with lower test weight.

Thus, farmers were also subject to discounts for low test weight grain. And there were many different combinations of what different elevators would pay, and it was a real mess. Guys didn't know where to go, and elevator managers had probably one of the most hair-graying years of their life.

Growers with infected wheat generally could expect a price in the \$2 range at best. And those with severely infected grain faced severe discounts. I know for a fact that a former board member of our association received a bid for some of his infected wheat that was 64 cents per bushel.

Farmers who had a commitment to sell wheat under forward contracts were hit the hardest by grain discounts because they could not deliver proper quality.

Grain discounts are less variable now, particularly after the Food and Drug Administration liberalized its vomitoxin guidelines. That didn't help price much, however.

Wheat prices and protein premiums dropped after the market perceived that more grain would enter marketing channels following the FDA decision. Discounts for vomitoxin have dropped, although some elevators have kept some discounts in place to protect themselves against an influx of infected wheat.

Since scab, vomitoxin, and test weight are interrelated, we question why grain was triple discounted. Vomitoxin discounts must be particularly questioned, considering that discounts were based on decade-old studies, suggested guidelines, not firm laws, and questionable testing procedures.

Extension plant pathologists at North Dakota State University and the University of Minnesota admit that vomitoxin tests are not entirely accurate, and that the hurried manner in which the tests began meant that some inspectors may have not been adequately trained in vomitoxin testing procedures. Consider also that if blending and milling process reduces or eliminates the vomitoxin levels in grain, then why discount it.

We appreciate the availability of Federal crop insurance and quality loss adjustments under the Federal disaster assistance program, but under Federal crop insurance, price adjustments were not consistent. Pricing mechanisms and adjustment levels for losses differed in areas.

There is no definite direction as to what determines No. 2 grade wheat, for example, or determining sample grade wheat value.

Further, Federal crop insurance doesn't have a de minimis yield, such as the ASCS de minimis yield of four bushels, that is needed to help producers determine whether to harvest.

Aside from those problems to be worked out, we have several recommendations in light of this year's scab problem. Assimilate quality adjustment factors. We would like to know why ASCS does not use quality adjustment procedures similar to Federal crop insurance.

Further, why is there a difference in grade adjustment factors for wheat and corn? Sample grade wheat has an adjustment factor of 75 percent, while corn has a grade factor of 60 percent for sample grade.

We question whether Northern Plains wheat growers would have received quality loss adjustments if the Corn Belt had not been flooded.

Once again, the debate over Federal crop insurance and disaster insurance assistance is resurrected. Would 1993 be the impetus for Federal crop insurance reform?

We strongly urge Congress to enact a viable, attractive Federal crop insurance program using the savings derived from eliminating disaster assistance programs. Participation should be made voluntary and should not be required for participation in farm programs, including conservation compliance.

Implement a study of this year's grain discounts. Most infected grain we farmers sold at feed prices will not end up in feed channels. It will be sold into milling channels.

Wheat growers should be interested in knowing what the real value of their wheat is when milled. We must not allow scab damage disease to steer United States wheat down the same road as the Irish potato famine of the 1840's.

Federal research on scab and vomitoxin is needed, including the development of resisting wheat varieties, production management practices to minimize the risk, and the effect of vomitoxin in animal rations, also, the use of it for use in ethanol.

Create a feed wheat program for growing seasons such as this, to isolate poor grain. This would prevent discounts at the farmgate and protect our export reputation with overseas wheat buyers.

Finally, we are concerned that the United States is subject to grain infected with scab and vomitoxin coming from Canada.

When U.S. marketing channels are burdened with our own infected wheat, measures must be taken to assure similar quality and inspection standards, as well as to insure that our marketing system will not be swollen by poor quality grain from Canada in years such as this which may result in price injury to our own producers.

Thank you, Mr. Chairman and members of the subcommittee, for allowing me this opportunity.

[The prepared statement of Mr. Kappes appears at the conclusion of the hearing.]

Mr. JOHNSON [resuming chair]. Thank you, Mr. Kappes.

Mrs. Hendricks.

**STATEMENT OF DIXIE HENDRICKS, MEMBER, NATIONAL FAMILY FARM COALITION, ALSO ON BEHALF OF DAKOTA RURAL ACTION**

Mrs. HENDRICKS. Thank you, Mr. Chairman. My name is Dixie Hendricks. I am a farmer with my husband and family in the northeast corner of South Dakota. I am testifying today on behalf of the National Family Farm Coalition, a coalition of over 3 dozen farm, church, and citizen organizations striving for revitalization of rural America.

I am also testifying on behalf of Dakota Rural Action, a South Dakota-based membership organization of rural people working to give people a voice in decisionmaking affecting our lives. Dakota Rural Action is a member group of this coalition.

The natural disaster of 1993 in the Midwest and the South is one that is tough for most farmers to weather, coming out of a man-made disaster of the Federal farm policies of the last 10 years.

Most farmers who have survived the farm crisis have no margin to fall back on this year to make up for the lost income due to loss of crop or prevented farming. Here is where I will mention that the Federal crop insurance program must be improved at this time in order for us to rely on this management tool for our farm businesses.

Today I would like to thank the Congress and President Clinton who have authorized the 100 percent payback of the Federal farm disaster formula, which covers our losses at about 42 cents on the dollar.

In the past, farmers have dealt with poor crop insurance and have received only half of the disaster program payment which covered losses at only 21 cents on the dollar. Adequate disaster relief will do more for rural America and Main Street than any major job bill or employment package that Congress could pass.

Now I would like to discuss the remaining Federal disaster programs and emergency programs. We see that our local ASCS offices are making allowances for poor quality of our wheat, corn, and other grains; but have we taken into consideration and will this become true of our alfalfa production?

Our production was decreased in quality due to the high moisture. No matter if we feed our hay to our livestock or whether it is a cash crop for our producers, it is a loss of income. Hay is not covered under crop insurance, and it should be.

Attached to my prepared statement is the formula in which we feel could be used for this hay quality adjustment. Some of our ASCS offices have been telling farmers that they will have their advanced deficiency payment deducted from their disaster payment.

Yet, I know, Congress has passed a measure that requires a payback not until after January of 1994. Dakota Rural Action and the National Family Farm Coalition urges you to drop the repayment requirements in their entirety.

We also urge Congress to amend the disaster program to address individual market differences for specialty crops. A person raising specialty crops is paid based on whether the crop is conventionally or organically marketed.



We recommend that there be a quality adjustment in the Federal disaster program for organically grown and marketed produce.

In regards to the droughts in the South, the poultry growers there are almost all contract farmers who do not really own their birds. When the heat killed hundreds of thousands of birds, these contract farmers could not qualify for any program because they did not own the birds.

However, the family farm, Tysons, could apply for the loss. The contract farmer has lost his flock and his income, yet his indebtedness and bills remained. There needs to be allowed a status to apply for Federal disaster relief so they can somehow recover their income.

Another recommendation we have is for the improvement of the Federal disaster program in the fairness in determining the actual crop loss and preventive planting of those of our farmers who are enrolled in an integrated farm management program.

At this time I would like to share with you my personal problem in regards to our cow-calf units. We have 80 cow-calf units, and it was devastating this spring when the waters came. Our small cows would try to follow their mother cow across the stream and drown in the water.

The place that I tried to go to receive help was the local FmHA office, and the booklet here is 67 pages long to apply for some kind of disaster. Now, the 10 calves that I lost out of my 80 herd did not meet the requirements of 40 percent overall loss; so, therefore I did not apply—I did not qualify for any program under the FmHA loan.

So I ask you here today: Where do I go to get help when my calves, my livestock are lost due to the water conditions?

Our main concern now is that farmers who do not have the ability to make their principal and interest payments, to the FmHA this year, due to the disaster, be allowed to defer their payments or put them at the end of their loans without having to become delinquent. This, too, would apply for commercial bankers.

Perhaps we can defer our principal and interest payments on to the end of our loans. According to our local ASCS office as of September, South Dakota's estimated agricultural losses totaled \$725,737,000.

Since then, we have had an early frost, and losses may exceed \$1 billion. In our five county areas, we have lost four implement dealers, also other Main Street businesses. I urge the—and my final concluding statement is to continue a disaster program that will help us American farmers stay on the land and make a decent living. And perhaps we can make this all happen in the 1995 farm bill.

Thank you.

[The prepared statement of Mrs. Hendricks appears at the conclusion of the hearing.]

Mr. JOHNSON. Thank you, Mrs. Hendricks.

Mr. Gebhards.

## STATEMENT OF ROBERT GEBHARDS, MEMBER, NATIONAL CORN GROWERS ASSOCIATION

Mr. GEBHARDS. Mr. Chairman and members of the subcommittee, I thank you for the opportunity to present the views of the National Corn Growers Association.

I am Robert Gebhards, and I raise corn and soybeans in the northwest corner of Missouri. And for the sake of time, I will eliminate a lot of the written testimony. However, the NCGA applauds Congress and the administration for their proper response to the weather-related crop losses.

However, as stated by, I believe, every member on this panel, the National Corn Growers Association is committed to an improved multicrop insurance program that would eliminate the need for the ad hoc disaster assistance in the future.

The NCGA feels that there are several inequities in the disaster assistance. But these are in my written testimony and I won't dwell on them. I would also like to have the past rules of the CCC loan covered losses due to nonfarmer control, such as tornadoes and floods, that that loss be reinstated as was covered earlier in the testimony from the ASCS.

We know we have had tremendous damage, and we want to be able to return to the land; and we need the assurance that all the Government agencies are going to work to repair the levees, fields, terraces, waterways, and if necessary, amend or extend their soil conservation plans.

Whenever crops are stressed by extreme weather, as talked about with the FDA man, they become more vulnerable to insects, molds, and other fungus; and aflatoxin is a waste product of at least two molds that affect corn.

This year, aflatoxin is being reported in the southeast corner of Missouri. In late 1979, it was reported in the Northwest, in my area. In the late 1980's, it showed up in central Iowa and made lots of news because they are the No. 1 corn producing State. And because aflatoxin is unusual in these regions, the farmers and the grain dealers aren't real certain about proper handling procedures.

I feel much of this confusion could be eliminated if the Federal Government would approve practices and procedures that are available in States where aflatoxin more commonly is a problem.

The corn farmers nationwide recognize the danger posed by aflatoxin and want to handle it in a safe, responsible manner. We have the most at stake. That our customers, both foreign and domestic, feel comfortable that we have the highest quality, and the corn is safe, but Federal law imposes a number of restrictions on the use of aflatoxin contaminated corn. Some of them you have already mentioned.

As a general rule, it prohibits treating corn that is above the set standard for livestock feed use. Actually, in today's market, the corn processors carefully monitor corn that goes directly in the human food chain. And the law requires that the Federal Grain Inspection Service test all exports for aflatoxin unless the buyer and seller say otherwise. But the majority of the corn that is grown in the United States is fed to livestock. And with proper treatment, this could still be an appropriate use of aflatoxin-contaminated corn.



The most common treatment available for aflatoxin is ammoniation. It is safe and effective for feed use. I shouldn't say this, I guess, but in some countries it is used for human use. We are not advocating that.

The Agricultural Research Service conducts a grant program for research for the elimination of aflatoxin, of which I had the privilege of serving on the technical group for 2 years. And in that time, I got acquainted with scientists from all over the Nation. And, because in my area in 1979, we had had some aflatoxin problems, I was aware of the ammoniation process; and I asked these scientists, every one of them I could get a hold of in the 2 years, one on one, as to whether aflatoxin treatment did detoxify aflatoxin. And they said it did, it worked.

I tried to find out why it hadn't been used. I found out that three States—Texas, Georgia, and North Carolina—have laws that allow aflatoxin to be decontaminated by ammoniation. Georgia, I believe, has an Extension Agent that goes around and shows farmers how to detoxify it and use it for animal feed. Texas has at least some portable units on trailers and semis that will go around and help detoxify corn.

I suggest that if this process was approved nationwide, it could be treated and fed without any harm to livestock; it would eliminate the concerns of aflatoxin in our food and export chain; the news media would have no reason to sensationalize every outbreak of aflatoxin that occurs in an unusual area; a list of the approved treatment that would economically help the individual farmer, commercial handlers, the export business, and as a result, I believe the entire Nation.

I thank you, and I will be happy to answer any questions.

[The prepared statement of Mr. Gebhards appears at the conclusion of the hearing.]

Mr. JOHNSON. Thank you, Mr. Gebhards.

We again have first notice of a vote coming up; we will be notified again, and we will make as much progress as we can until we have to recess for that vote.

Mr. Gebhards, you have been involved in a working group on aflatoxin. Has that group, in your view, been a productive effort on the aflatoxin issue?

Mr. GEBHARDS. That group is charged strictly with the elimination of aflatoxin. When I first went there, I thought, hey, we can work on this ammoniation or any other process that will detoxify or treat aflatoxin. They led me to understand that that was out of their realm and they could not deal with that phase of it. It was several commodities, peanuts, corn, tree nuts, and cottonseed.

Mr. JOHNSON. Mrs. Hendricks, you talked about the loss of calves and ineligibility for Farmers Home Loan assistance for replacement. Is it possible to insure, through the private sector, for loss of livestock because of flooding and so on?

Mrs. HENDRICKS. In our area, flood insurance is not available. If it would have been lightning or fire or that type, but flood insurance is not available on our livestock.

Mr. JOHNSON. There seems to be a general agreement among members of this panel that while perfecting the disaster legislation is honorable, that the most desirable end policy goal ought to be

to get out of the Federal crop disaster business altogether, and move toward a much improved crop insurance system, providing each individual producer with his own risk management tool to voluntarily use or not use and be assured of recovery when he or she has a loss regardless of whether it is a national loss or what the politics of that particular time might be. Is there any disagreement here on this panel that that really is what ultimately we ought to be trying to go to?

Mrs. HENDRICKS. True.

Mr. JOHNSON. I think that there is a consensus, that while the disaster bill is of enormous benefit to a lot of people right now, given the urgency of the problem, I sense—and this is a statement more than a question—a frustration over the ad hoc approach that we currently use; that it is politically driven, that we seem to reinvent the bureaucracy and the administrative machinery each time we do this; each time it is done a bit differently.

It is confusing, always involves some inequity, and I think there is a sense among farmers themselves that we would be better off to get away from that approach. Instead of doing crop insurance and disaster programs both and doing them both badly, that we would be better off to do one program and do it well, even understanding that political temptations to do crop disaster bills will always be with us. It only takes a major nationwide flood or large regional flood or a drought during a Presidential primary year in Iowa to generate a lot of interest in augmenting crop insurance with still an additional ad hoc disaster program. But so long as we do those, they will undermine the willingness of people to sign up for crop insurance programs.

Granted, in many of our States, the existing crop insurance program has a low sign-up rate, because partly out of people being convinced that a disaster bill is coming down the way, but also simply because for many people it just doesn't pencil out very well. So it would involve a concerted effort on the part of this subcommittee and on the part of Glenn English's subcommittee in particular to perfect a better crop insurance program.

I am certainly hopeful that the House Agriculture Committee will take the message to heart that members of this panel have expressed, and at least in the context of the 1995 farm bill, if not sooner, take up an issue that should have been resolved, frankly, in the 1990 farm bill and was not. It is always harder to figure out how to provide better benefits for less money. But nonetheless, tackle that more aggressively than has been done in the past.

I know that Chairman English is convinced that that is the route that we need to go, and that Congress, once we arrive at that solution, needs to show enough political courage to say that that is our response to disasters, and that is that. That is a big order. But hopefully, we can arrive at that point.

Mr. Pomeroy, do you have any questions or comments?

Mr. POMEROY. I would like to give this panel the opportunity to comment on the issue of quality discount compensation in the context of the disaster program. I believe all of you were in the room when it was discussed among panel members earlier. Do any of you think the disaster program available for 1993 losses would have been fair or even minimally adequate if it had not accounted for

quality discounts actually experienced by the farmer as they market the 1993 crop? We will start right here and just go down the table.

Mr. DIEDRICH. I am today representing the soybean industry where the quality issue doesn't seem to be quite as big of an issue as it is in, say, for instance corn and wheat and so on, but I am a farmer that raises both of those crops also, so I feel I can comment on that anyway.

I had low test weight corn last year, averaged 45 pounds on my farm. This year we had frost 2 weeks ago and corn was thinking about deadening real strongly at that point. So I can guarantee myself that I am going to have low quality corn again. So my answer would be definitely.

That corn, I am going to lose 30 to 50 cents in value on that product. It is not a bulk commodity, it is price times bushels is what gives you your income, so no doubt you have to, whether you are in the crop insurance or whether you are in the disaster business, that needs to be accounted for.

Mrs. HENDRICKS. I agree with the statement in regard to the corn crop of last year, had we not had a quality adjustment, it would have been like 85 cents a bushel, very low, and vomitoxin in the wheat, not even marketable.

Mr. KAPPES. The quality adjustments did a lot for the wheat growers in Minnesota because we probably in many cases had adequate bushels that wouldn't have been covered by Federal crop insurance had they not had a quality adjustment or disaster that it had a quality adjustment, so it is very advantageous to boost the price.

Mrs. HENDRICKS. I agree with Mr. Kappes on that point also, and on the wheat issues with the quality adjustments that the bushels in our area were above the disaster thresholds, but with poor quality adjustments, then that fits our program.

Mr. GEBHARDS. I am not real comfortable with understanding how this quality adjustment is going to work on this crop yet, hardly enough to comment on them. I would comment on quality adjustments on CCC grain back in 1992, for example, that I talked about. Several years ago, flooded grain would have been adjusted because if you got, like I did, \$1.05 for some grain that was flooded, I would have to pay off the full loan value and so forth today.

In the past, they covered unnatural disasters. I know of a farmer that lost all of his grain bins, all of his corn, everything. They were broke. He lost his storage facilities, along with a lot of buildings and other things. But this grain, as I understand it, if it was right wouldn't be covered in this type of quality adjustment. I think that maybe you should reconsider natural disasters as a part of the loan commodity.

Mr. POMEROY. Mr. Chairman, the only final comment I would have, especially in light of the time to go over and vote, is an expression of appreciation. The input from your respective associations and individual producers has been vital for me to understand what is happening, and how these programs are working. As a result, I and a number of other members of this subcommittee have had substantial interaction with the USDA as the 1993 adjustments and adjusting procedures have been developed. In the end,

I think we have been able to improve things somewhat for our farmer constituents, and your input was just a critical part of making that happen.

Mr. JOHNSON. I think Mr. Pomeroy's point on the critical usefulness of your organizations is well taken. We will recess the subcommittee now once again, conclude this panel, and we will take up the final panel immediately after a vote on defense authorization across the street and conclude this hearing at that time. Thank you, again, to the members of this panel.

[Recess taken.]

Mr. POMEROY [assuming chair]. We can begin hearing the prepared testimony, which in light of the hour, I would encourage you to summarize. Please begin, Mr. Keith.

**STATEMENT OF KENDELL KEITH, PRESIDENT, NATIONAL GRAIN AND FEED ASSOCIATION, ACCOMPANIED BY RANDALL C. GORDON, VICE PRESIDENT, COMMUNICATIONS AND GOVERNMENT RELATIONS, AND THOMAS C. O'CONNOR, DIRECTOR, TECHNICAL SERVICES**

Mr. KEITH. Mr. Chairman, we do appreciate the opportunity to testify on this issue.

I am Kendell Keith, president of the National Grain and Feed Association. Accompanying me are Randy Gordon, our vice president of communications and government relations, and Tom O'Connor, our director of technical services.

Our organization is a nonprofit trade association of more than 1,000 grain, feed, and processing firms. Approximately 70 percent of our members are country elevators, both private and cooperatives. Our membership is committed to ensuring a safe food supply. In fact, our mission statement says that we are committed to ensuring a wholesome, high-quality and abundant food supply for domestic and world consumers.

Let me first talk about aflatoxin and how it affects food safety. The Food and Drug Administration has provided clear regulatory guidance concerning the handling and merchandizing of grain containing aflatoxin to provide a safe feed outlet for affected corn. But beyond just regulations, there are powerful economic incentives for elevators to do what they can to avoid handling corn containing aflatoxin. Elevators that take delivery and commingle corn containing aflatoxin at levels exceeding legal limits do risk having the contents of their entire elevator seized and condemned. Because of user requirements, grain company contracts typically contain clauses that require grain to be sold compatible with FDA regulations. That is, the grain must be merchantable. Indeed, we have a sample grain contract that our association publishes that we would like to submit for the record that contains such a merchantability clause.

When our industry suspects an aflatoxin problem, our association becomes very active in providing information to our members regarding the regulatory and statutory obligations concerning aflatoxin. We do monitor research and new grain-handling techniques and we maintain a close and ongoing dialog with processors concerning aflatoxin. We have also been very active within the



U.N.'s Codex Alimentarius Commission concerning levels of aflatoxin in international trade.

Fundamentally to manage risks of aflatoxin when we suspect it is present as an industry, producers and country elevators begin working early to identify the extent of the problem while the corn is still on the stalk. There is widespread sampling that generally occurs and educational meetings are held on how to manage the crop and try to minimize the damage. Furthermore, once aflatoxin is known to be present in an area, the entire marketing chain takes additional stringent quality-control measures to prevent contaminated grain from entering the market channels, and to direct such corn to FDA-approved uses. Export elevators, too, have instituted quality-control measures to screen inbound corn, and virtually every processor in the United States is vigilant in inspecting inbound corn where aflatoxin is suspected.

These stringent contamination prevention measures implemented by domestic processors and export elevators, coupled with the increasingly common quality control requirements from grain elevators, are part of a multilayered system of safeguards that preserve the safety of the food supply in the United States and those grains that are exported that may contain aflatoxin.

The regulatory framework governing aflatoxin, of course, has been in place for many years, and is well understood. But in contrast, similar certainty did not exist until recently with FDA's current regulatory stance on vomitoxin. It is, as stated earlier, a noncarcinogenic toxin, but it was not until FDA issued its new advisory levels on September 16, of this year, that our industry was certain as to whether the 1982 advisory levels would become more or less stringent, or whether the advisory levels would become action levels.

The distinction between action levels like those set for aflatoxin and advisory levels like those that have been set for vomitoxin are very important to our industry. Action levels denote specific levels of contamination at which the agency is prepared to take regulatory action. With the handling of a noncarcinogenic mycotoxin like vomitoxin, the grain handling industry must balance several considerations. These include, first, the quality needs of end users; second, FDA's regulatory policy; and third, the elevator managers' desire to provide a fair, competitive market for the farmer customers.

Our members report that the magnitude of storage and market risk associated with the 1993 wheat crop was particularly acute. These uncertainties led many elevator managers to advise their farmers to hold on to their 1993 crop until the situation became clearer. But some farmers, either by choice or out of necessity, did deliver new crop wheat for sale during this period of uncertainty, and the price was discounted because of the presence of vomitoxin.

The major market factors that led to the risk management strategy of our industry included the extent to which the crop contained vomitoxin—it was largely unknown until we got into the harvest season; second, how extensive the damage level was it likely to be; third, there were low quantities of high-quality stocks coming into this crop year; fourth, there was concern over the market demand for weather-damaged wheat; fifth, there was uncertainty surround-

ing the potential changes by FDA to its vomitoxin regulatory policy; sixth, there were questions concerning the accuracy and repeatability of inspection tests for vomitoxin; and, last, the price support policy that ASCS would adopt with respect to the weather-damaged wheat. They were all factors of risk that had to be considered.

Given this myriad of factors, raw grain handlers took action early in the harvest season that they believed to be prudent to protect their financial integrity. These actions ranged from initially not even accepting wheat containing vomitoxin to later accepting, only after adjusting the price to reflect the elevator's perceived risk in the absence of a clear market demand for such wheat.

However, as these marketplace uncertainties have gradually cleared up, it is our understanding that the pricing spread between high quality wheat and weather-damaged wheat has begun to ease.

In closing, we see increased consumer demand today for even greater safety in an already safe and wholesome food supply. We see more and more stringent legislative and regulatory mandates for food safety coming down and advanced technology that allows us to measure ever smaller quantities of contaminants, and we see with these changes the risk, the higher levels of risk being shifted back in the chain back to the producer level.

We think for this reason that it is a very important consideration, as Congress examines the future of the Federal crop insurance program and other programs that are meant to be a safety net for farmers, to consider all of the risks that the farmer faces. Thank you very much.

[The prepared statement of Mr. Keith appears at the conclusion of the hearing.]

Mr. JOHNSON [resuming chair]. Thank you, Mr. Keith.

Mr. Campbell, it is heartening to us all to know that there is life after Government service, and we welcome you here today as well.

#### **STATEMENT OF JOHN CAMPBELL, ASSISTANT VICE PRESIDENT, CORPORATE AFFAIRS, AG PROCESSING, INC., ON BEHALF OF THE NATIONAL GRAIN TRADE COUNCIL**

Mr. CAMPBELL. Thank you, Mr. Chairman. It is almost as much fun to represent the grain industry as it is to represent USDA. I was out of the room when they voted on who should do this, so here I am.

I am representing the National Grain Trade Council. I am also employed by Ag Processing, a cooperative headquartered in Omaha, Nebraska. I will dispense with most of my prepared statement and try to get right to the meat of it.

Even though times have changed dramatically from the early part of this century, the purpose for building grain handling and storage facilities has not, and that is whether the private entity builds those facilities or a group of farmers in the form of a cooperative.

Function of the grain elevator, then and now, is value enhancements. An elevator adds value to the collective marketing, including storage, enhanced transportation leverage, volume clout with end users and quality management.



Quality management is a merchandizing function that is the focus of today's hearing. When the grain industry manages quality, it does so within a given set of constraints. The first constraint is what comes to the elevator from the farm. What goes out of the elevator can never be better than what, on average, comes into the elevator.

The final constraint is meeting the quality specifications of the buyer, whether it be a processor or export customer. The industry was caught off guard by vomitoxin this year because of the unusual occurrence of the toxin and its widespread nature in northern wheat areas. Vomitoxin, as you know, is not a carcinogen like aflatoxin is, but the wheat is primarily a human versus an animal food. As a result of the human food concern, the FDA and end user specifications are critical to setting values in the marketing chain.

As wheat harvest began in the north, grain purchasers were caught in a quandary for several reasons. First, the most recent FDA pronouncement on vomitoxin was over a decade old. As a result, FDA indicated it was going to review the 1982 guidelines. Until that review was completed, no one really knew what the rules were going to be, and as you all know, harvest does not wait for agency reviews.

The second quandary for a grain merchant was, if you were purchasing grain under the assumption that the old FDA rules were going to stand, you still did not know which field testing method was going to suffice and the repeatability of the available tests did not satisfy some users. I think that was described by one of the wheat farmers at his local elevator and the experience they had.

All of us were having similar experiences. Premiums and discounts based on quality are not a subjective exercise in the grain marketing business. Positioned between producers and end users, local grain elevators must post their bids based on the bids from end users. As long as some end user was willing to post a bid for vomitoxin-contaminated wheat, it gave a basis for the local grain elevator to post a bid to the farmer.

Some have accused the grain industry of gouging farmers who wanted to sell vomitoxin-contaminated grain. In a business marked by sharp competition, such an accusation has no basis in reality. North Dakota is a good example. In 1991, there were 300 firms operating at over 500 locations. The largest firm has only 30 locations. A grain buyer with a discount over the prevailing market level will not be able to buy the wheat. The point is that the way you make money in the elevator business is to elevate wheat, and if you are gouging, you are not going to be able to buy wheat and you are not going to be able to make money. A small amount of money on a large volume of product.

While there have been discounts for vomitoxin-contaminated wheat, especially when no one knew what was going to happen early on—in fact, some of us wanted to close our doors but decided not to—the market is also paying historically high premiums for wheat with low amounts of vomitoxin. And I would just like to have you quickly refer to page 11, because I think it tells quite an amazing story here. Page 11 is a chart of the milling quality premiums for Duluth Spring Wheat.

Mr. JOHNSON. Bear with us here for 1 second.

Mr. CAMPBELL. It is easier to see this than it is to explain it. The heading is Duluth Wheat, 14 percent minus Minneapolis nearby wheat.

Mr. JOHNSON. Yes, we have it.

Mr. CAMPBELL. As you can see, in 1993, the premiums for milling quality wheat have gone off the chart. And this is with two parts per million vomitoxin.

Now, the other interesting chart is the chart on page 8. All the numbers are basically the backup for the charts, and you can see Duluth wheat there, and that is the combination of the premium plus the futures close.

Anyway, the point is that for milling quality wheat, with two parts per million vomitoxin, prices are historically very high, and the discounts or lower premiums are counted from this very high basis.

These premiums are being paid because there is not much wheat of that high a quality. Most producers don't have wheat with less than two parts per million, and so the high premiums are irrelevant to most of them.

The other thing is that most farmers ended up with a broad array of quality problems, not just vomitoxin. They had low test weights, damaged kernels, and all of these factors go into the mix to end up with a final price for the producer, not just vomitoxin content.

But, again, getting back to the facts—last Thursday, the Duluth-Minneapolis market for five parts per million vomitoxin wheat was offering a 15 to 65 cent premium over the nearby futures. So if you take a 30 or 40 cent average, something like that, and the futures closed at \$3.27 per bushel, so banking it off to something that is relevant to the farmer, say, if he was on the border or between Minnesota and North Dakota. I just used 50 cent per bushel transportation and elevation charge. That backs up to \$2.90 per bushel to \$3.50 per bushel price range, and that is for five parts per million vomitoxin wheat.

Now, what does that mean? Well, if you look at pages 14 and 15, you will see the documentation both from Minnesota and from North Dakota, about both the monthly and the yearly average prices. Just looking at North Dakota, which is page 15 of the testimony, and looking at August, you will see that if you average the last 5 years' selling price, this is the wheat that has been marketed times the dollars that have been paid for it, what we have is a situation where the average is \$3.07 per bushel for those 5 years. That is for vomitoxin-free wheat.

This year we have a situation where five parts per million vomitoxin wheat is selling for about the same price or even more than nonvomitoxin wheat has sold for in the past, and that is true both if you look at the monthly and the yearly and you look at both North Dakota and Minnesota. So although producers are not getting the fabulously high premiums, when 80 percent of the wheat is between two and eight parts per million vomitoxin, most producers are receiving a price back at the farm that is consistent with what historically wheat has been marketed for, even without vomitoxin.

I got a real eye-opener myself when I started looking at this. I will just close real quickly by saying that we really have quite an amazing marketing system. If it weren't for the marketing system, people with over five parts per million vomitoxin would be getting zero for their wheat, and they are getting something for it. In fact, they are getting a pretty historically decent price by historical standards for five parts per million vomitoxin wheat, and for two parts per million vomitoxin wheat they are getting very high prices, if all of the other quality factors fall into the milling quality category.

I will close my statement right there, Mr. Chairman, and make myself available for questions.

[The prepared statement of Mr. Campbell appears at the conclusion of the hearing.]

Mr. JOHNSON. Thank you.

Let me ask anyone who wants to respond whether there are differences between the United States and the Canadian marketing systems such that it encourages the importation of lower quality grain into the United States. Does anybody see a problem there?

Mr. CAMPBELL. Well, on the vomitoxin specifically, the end user, which we are not, but the end user is going to take the responsibility for testing for quality. So it doesn't really matter where it comes from; the end use specs are a function of the product that is being marketed, the end product. So, again, it is more a matter of price than it is necessarily a quality distortion, if you will.

Mr. JOHNSON. You don't see the Canadian Wheat Boards' discounts as being so high that they have forced producers to opt out of their obligations to the board in order to move their grain to the United States, or the discounts are not as great for low quality wheat?

Mr. CAMPBELL. They may, but I am not really qualified to say whether that is true or not.

Mr. JOHNSON. Mr. Keith, do you have any objection on that?

Mr. KEITH. I am not personally aware of what the Canadian wheat discounts are for vomitoxin.

Mr. CAMPBELL. I think you are probably speaking of last year when you probably had some varieties of wheat which they do not want to export through the board, and those varieties may have been sucked in, if you will, because of the board's higher quality standards. But the value for that wheat would still be set in our marketplace by the end user specs.

Mr. JOHNSON. Mr. Pomeroy.

Mr. POMEROY. The end user specs on wheat will apply to what an elevator is trying to market; is that correct?

Mr. CAMPBELL. Yes.

Mr. POMEROY. We don't require end user requirements of any kind of Canadian wheat coming into this country; is that correct?

Mr. CAMPBELL. The end user does.

Mr. POMEROY. The end user does at the time it is commingled with—it is in the county elevator, in the grain handling process mixed with U.S. wheat?

Mr. CAMPBELL. Sure.

Mr. POMEROY. It isn't isolated. In other words, at any point in the import system presently do we specifically impose a domestic requirement on the testing of Canadian wheat?

Mr. CAMPBELL. Yes, but the way that the export programs are structured right now, and wheat being totally dependent on Government programs, anybody who is importing Canadian wheat is keeping that identity preserved in order to provide the certification to the U.S. Government that it is not going to be exported under Government programs.

Mr. POMEROY. What is the nature of that requirement?

Mr. CAMPBELL. It is a statutory requirement that no no foreign origin grain can be exported with our export enhancement program, for example.

Mr. POMEROY. So on your elevators, are there requirements that may not be called end use certificates but have the effect of end user certificates for purposes of keeping that grain isolated?

Mr. CAMPBELL. They are called warranties, if you are going to participate in export programs. Most of the trade would be from end users, and probably not through a middle person, not through a grain elevator. So, again, whether you are an elevator who is purchasing or whether you are an end user directly, you are going to insist on the same quality specs, regardless of where the origin is.

Mr. POMEROY. Presently it is my understanding that if there is an inspection requested of Canadian wheat, the elevator picks up the tab for that inspection price. Do you have any position on that?

Mr. GORDON. Who would request the inspection?

Mr. CAMPBELL. If the elevator is requesting it, then the elevator would pay the fee.

Mr. POMEROY. Is that a disincentive for the elevator to have a quality inspection done of Canadian wheat?

Mr. KEITH. I don't think the price in this case is a relevant consideration, given that if he perceives a risk of a high vomitoxin level, the discounts are sufficient enough incentive to have the test done.

Mr. CAMPBELL. And the grain industry is testing everything anyway. It might not be an FGIS test, but we are protecting ourselves by testing everything anyway.

Mr. POMEROY. That gets to my next question. This has been a year where we have seen, as I think you mentioned, Mr. Campbell, very substantial price impacts for quality discounts assessed. Are testing programs and procedures sufficiently reliable to give the marketplace a great deal of confidence that that discount is appropriately placed?

Mr. CAMPBELL. I think it is now, but of course early on, take the first couple weeks of harvest, there was a lot of confusion about the tests; there was concern about repeatability. So the market really had a hard time sorting things out early on. And now things have become much more orderly.

Mr. POMEROY. Mr. Keith.

Mr. KEITH. Well, yes, things have become more orderly. There is still some concern about the accuracy of the test, but ultimately, you have to live with what you have. We are always trying to encourage greater accuracy. We want tests to be repeatable, we want them to be efficient. This is not the perfect test, but it is the test



that FGIS has had reviewed and has concluded is the best available to provide timely analysis. So this is what the industry has come to rely on and has come to value grain on and has come to trade grain on. It has become commercially acceptable.

Mr. POMEROY. I believe the public confidence in the grain handling system in North Dakota has been shaken a bit by, first of all, the terribly steep discounts applied during this period of uncertainty you spoke of earlier. Unfortunately, those producers forced to market during that period of time were those without any operating margins whatsoever, or those who had forwarded contracts and were compelled to put their product into the market at that time.

Isn't it true that elevators that accepted grain under very steeply discounted prices during that period of uncertainty now stand to come out very well in light of the market price that has rebounded for that product?

Mr. KEITH. It depends on the situation.

Mr. CAMPBELL. I think you have to balance that out with the premiums that were being paid which have come down. I mean, these things work at both ends. So you theoretically maybe have picked up a little on the bottom, but you have lost some on the top; it is like a balloon.

Mr. GORDON. Mr. Pomeroy, could I add to that for a moment. To give you an idea of the kind of uncertainty that the market was operating under at the time, the announcement that FDA made on September 16 was immediately followed by a wire service report that misinterpreted what FDA was doing, and was basically saying that the raw wheat number was being reduced by half.

We got a call from a cooperative elevator that is a member of ours in South Dakota that said, please do something to correct that, because all buyers are pulling their wheat bids for the next day. I think that is reflective of the kind of environment and uncertainty that you have alluded to correctly.

Mr. CAMPBELL. You know the thing that I need some help understanding is that our own people, the Extension Service, everyone anywhere close to the industry was telling people, don't sell, hold off, wait until this thing settles out. We were saying that because we didn't know how to deal with it yet. There are a few instances where you might have to deliver against a contract. But you did have the recourse loan program available, you could have used the recourse loan program, and you could have gotten money from the loan program, paid off the contract and sat out the actual marketing of the physical commodity, or you could have bought in some other product. So I think there were some tools out there provided by the Government that may have not been used when they could have been.

Mr. POMEROY. I think the uncertainty that has existed in the distribution system has existed at least as great at that level, and even greater in the producer level, which certainly led to a good deal of confusion and maybe a lack of awareness in terms of other alternatives.

The other thing that has shaken the confidence, I think, of the public a bit in the grain handling system is the consequence of the discount and testing measures that will produce different results

even on the same truckload, and some of that is the nature of the beast, I think, as you mentioned, Mr. Keith. But it is regrettable. Is there anything that can be done to elevate public confidence in the testing procedure?

Mr. KEITH. Well, we have had the same experience with aflatoxin. We don't know exactly what. In aflatoxin we know that sampling errors can be tremendous, simply because the aflatoxin itself becomes concentrated in single kernels, and if you happen to pick up one contaminated kernel in a sample and it gets to be analyzed, then you have the risk for a very high level. But the sampling error is what contributes to variability in measuring aflatoxin.

In other areas, like vomitoxin, we are not sure what is contributing to the variability in measurement at this stage. A few years ago we had no test for vomitoxin that could accurately measure it, and so we are at least in this year better off than we have been in previous years.

Mr. POMEROY. The prospect of blending the 1993 crop for purposes of reducing dramatically vomitoxin levels, you indicate, is impacted by a relatively low amount of earlier crop that is in storage?

Mr. KEITH. Yes. Of high protein wheat.

Mr. POMEROY. Even in light of the record harvest in 1992, those stocks are not very high.

Mr. KEITH. Those stocks are not very high, by historical standards, they are I think about the second lowest in 20 years, I believe, yes.

Mr. POMEROY. North Dakota State University has done tests that show that the milling of wheat produces much lower concentrations of vomitoxins in the flower, higher concentrations in the bran and by-products. Will this have an impact, do you think? Will this impact—what, if any, marketing impact will be based on growing market confidence and what happens to vomitoxin in the milling process?

Mr. CAMPBELL. I think the millers are still trying to sort this out themselves, but the market is showing us smaller premiums, but not significantly smaller premiums for 2 or less vomitoxin. But in our own case, we have a feed company, and what happens is that the vomitoxin concentrates in the midds, so when a flower miller is trying to make money, they have to make it not only on the flower, but on the by-products.

Our own feed company has refused to purchase anything over five parts per million vomitoxin in the midds, which I am told may be one part per million in the wheat. So it doesn't necessarily follow that the fact that you can clean up the flower is a great benefit if you are concentrating the vomitoxin in your coproduct, and in order to sell your coproduct, you have to buy even cleaner wheat.

Mr. POMEROY. That is my last question. I found your responses excellent. Thank you.

Mr. JOHNSON. I want to thank the members of this panel. Yes, Mr. Keith.

Mr. KEITH. Before we close, Mr. Chairman, could I make one comment. I think we have some concerns about Congressman Peterson's bill he discussed earlier from this standpoint. We are not sure if you set up some kind of a screening process on shipments



that are coming in from Canada, what levels you would consider for rejection, and we are a little concerned about how that factors into FDA's regulatory scheme of vomitoxin here in the United States.

They, of course, are going with advisory levels right now rather than action levels, which are more stringent, and if there is some kind of a rejection level set up, would that somehow affect the regulatory structure here in the United States, and adversely affect our producers because of that. I just raise that concern, because it seems to me if you are going to institute some kind of a screening process, you have to have some levels in mind at which you are going to reject grain.

Mr. POMEROY. As cosponsor of that bill, I appreciate that point. I believe that the overriding concern is to identify the quality of the Canadian grain coming in. The issue of whether or not elevating concern with Canadian vomitoxin-affected wheat inadvertently impacts our own wheat to our disadvantage is a concern that we have as the bill moves forward. Information or questions that you might have as to the wisdom of this approach in light of that, we would sure welcome.

Mr. KEITH. Thank you.

Mr. JOHNSON. I want to thank members of this panel for your insights and also your patience throughout the course of the day. I think it has made a very valuable contribution to the hearing record. With that, this hearing is adjourned.

[Whereupon, at 1:45 p.m., the subcommittee was adjourned, to reconvene, subject to the call of the Chair.]

[Material submitted for inclusion in the record follows:]

STATEMENT BY BRUCE R. WEBER, ACTING ADMINISTRATOR  
AGRICULTURAL STABILIZATION & CONSERVATION SERVICE  
U.S. DEPARTMENT OF AGRICULTURE  
BEFORE THE  
SUBCOMMITTEE ON GENERAL FARM COMMODITIES  
COMMITTEE ON AGRICULTURE  
U.S. HOUSE OF REPRESENTATIVES  
SEPTEMBER 28, 1993

Mr. Chairman, and Members of the Subcommittee, I am happy to be here with you today to give a general overview of the 1993 disaster program, with specific emphasis on quality issues. We also have representatives from other USDA agencies to help respond to questions.

The 1993 disaster program was recently mandated by P.L. 103-75. ASCS began accepting applications on July 22 for 1993 disaster-related crop production and quality losses. The application period will end March 4, 1994.

The current program operates much like the previous disaster programs: if you have crop insurance, you must have a loss greater than 35 percent (40 percent without crop insurance); program and nonprogram crops are included; payments per person may not exceed \$100,000; and, pursuant to P.L. 103-75, the President has determined that extra-ordinary circumstances exist that warrant further assistance and has directed the Secretary of Agriculture to make payments to producers.

One of the big differences in the 1993 disaster program is the fact that quality losses are covered for major crops--program and nonprogram alike. Adjustments will be made to the actual production of wheat, corn, barley, oats, grain sorghum, upland and ELS cotton, rice, soybeans, sunflower, peanuts, sugar beets, and tobacco, if the quality of such production has been affected by a natural disaster. CCC will adjust the actual production of the crop by factors determined by CCC which reflect the loss in value of the crop if such loss in value can be attributed to eligible weather-related causes.

The Department has taken steps to assist producers suffering from other quality-related problems brought about by this year's unusual weather. Several States have reported the incidence of vomitoxin, which thrives under cool, wet conditions and causes a disease in wheat commonly referred to as "pink scab." The Food and Drug Administration (FDA) has advisory levels for wheat containing vomitoxin. Even though these levels are only advisory in nature, FDA is not prevented from taking enforcement action, including seizure of the product, to protect human or animal health from grain that contains significantly higher levels of vomitoxin.

Ordinarily, CCC does not allow contaminated grain to be pledged as collateral for a price support loan. However, as an aid to affected producers, we have decided that wheat and barley that is otherwise eligible to be pledged as collateral for a price support loan, but that contains vomitoxin, may be pledged as collateral for a:

- nonrecourse loan if the level of vomitoxin is 5 parts per million or less, which is the minimum FDA advisory level for wheat to be used for feed; or a
- recourse loan, at a reduced loan rate, if the level of vomitoxin is more than 5 parts per million.

The loan rate would not be reduced for cases where the level of vomitoxin is 5 parts per million or less. Producers with loan collateral with more than 5 parts per million of vomitoxin would be given a recourse loan using the sample grade discount as if the grain had graded U.S. Sample.

Grain pledged as collateral for a nonrecourse loan may be forfeited to CCC at maturity in settlement of the loan, even though the grain contains vomitoxin. However, if the vomitoxin level is greater than 5 parts per million the settlement value will be considered zero. Consequently, producers would be required to repay these loans in an amount equal to the loan principal and charges, plus interest. Recourse loans must be repaid at this same amount.

The unprecedented rain and flooding in the MidWest and drought in the Southeast has brought about untold devastation for the affected producers. USDA has made, and will continue to make, every effort to use our discretionary authority to ease the financial burden these disasters have brought about. As stipulated by Secretary Espy, all eligible disaster assistance claims are being paid within 2 weeks of the time producers have their application approved. As of September 15, 1993, disaster payments totalling \$18.7 million have been paid on 1993 disaster claims.

This concludes my statement, Mr. Chairman, and we would be happy to answer any questions you may have.





DEPARTMENT OF HEALTH &amp; HUMAN SERVICES

Public Health Service

Food and Drug Administration  
Rockville MD 20857

STATEMENT BY  
JOHN WESSEL  
CONTAMINANTS POLICY COORDINATION STAFF  
OFFICE OF REGULATORY AFFAIRS  
FOOD AND DRUG ADMINISTRATION  
PUBLIC HEALTH SERVICE  
DEPARTMENT OF HEALTH AND HUMAN SERVICES

BEFORE THE  
SUBCOMMITTEE ON GENERAL FARM COMMODITIES  
COMMITTEE ON AGRICULTURE

SEPTEMBER 28, 1993

FOR RELEASE ONLY UPON DELIVERY

Mr. Chairman,

I appreciate the opportunity to appear before your committee to discuss the Food and Drug Administration's recently issued advisories affecting grain that may be contaminated with mycotoxins.

The term "mycotoxins" is applied to chemical toxicants produced by mold. There are a number of mycotoxins that can occur in a variety of foods and feedstuffs. Because mycotoxins may be toxic to humans and animals, food or feed contaminated with a mycotoxin may be adulterated under the Federal Food, Drug, and Cosmetic Act (the Act). The Act prohibits the sale or introduction of adulterated food or feed into interstate commerce.

The mycotoxins that I will discuss today are vomitoxin and aflatoxin. Both are toxic, both may be affected by adverse climatic conditions, and both are known to be contaminating grain grown in the Midwestern part of the United States and possibly elsewhere.

#### Vomitoxin

The first mycotoxin that I will discuss is deoxynivalenol (DON), which is commonly called vomitoxin. This toxin is produced by several mold species associated with pink scab disease in grain. The molds thrive in the cool, wet conditions that occurred in the upper Midwest this year. This resulted in some wheat in that

area becoming contaminated. The conditions for this mold growth and toxin production may also exist in other parts of the country.

The agency first issued guidance to State and industry officials in 1982 that described levels of vomitoxin in wheat and wheat products that we believed would not present a public health hazard. This advice was based on the limited toxicological data that were available at that time. Since then, additional data have become available, including reports of outbreaks of vomitoxin-associated acute gastrointestinal illness in humans in China (1984 and 1985) and in India (1987). Although uncertainties exist concerning the precise role played by vomitoxin in these outbreaks, the data provide a clearer picture of the effects vomitoxin may have on human health.

On the basis of this new information, FDA updated its advisory levels for vomitoxin in wheat products intended for human consumption (e.g., flour) and in wheat and other grains used as animal feed. This revised guidance continues to be protective of the public health, and also is responsive to the need for guidance being expressed by State officials and industry.

The updated advisory levels were sent to State and trade associate officials on September 16, 1993 and are appended to my statement.

Aflatoxin

I would like to now turn to the advice the agency provided to the Missouri Department of Agriculture concerning aflatoxin contaminated corn.

Aflatoxin is also a mold-produced toxin that can occur when a food crop is under stress, such as drought followed by extremely wet conditions. It has been found in various kinds of foods, most notably oilseeds. Corn is especially susceptible to aflatoxin contamination. Aflatoxin is a known carcinogen in laboratory animals, possibly a carcinogen in humans, and may also cause liver damage when ingested at high doses.

FDA began regulating aflatoxin in food and feed when it was first discovered in the 1960s. In the intervening years, many toxicological studies on the health effects of aflatoxin have been conducted, including epidemiological studies involving humans exposed to high levels of aflatoxin. Based on our current understanding of aflatoxin toxicity, we continue to believe that our longstanding action level of 20 parts per billion (ppb) for human food does not pose a threat to consumers. Identical guidance also exists for aflatoxin-contaminated feed intended for dairy cattle and immature animals. With dairy cattle, the concern is the possible transfer of potentially unsafe levels of aflatoxin to the milk of these animals. The available data show,

however, that other food-producing animals, if mature, can be exposed to higher levels of aflatoxin without adverse effects on the health of the animals and without the occurrence of unsafe aflatoxin residues in the animals' edible food products, such as meat or eggs. The action levels for these animals range from 100 to 300 ppb. The details on the action levels for aflatoxin in corn are also appended to my statement.

On September 10, 1993, the Missouri Department of Agriculture wrote FDA requesting guidance in dealing with what the State believes to be a serious aflatoxin problem with its 1993 corn crop. Specifically, the State asked FDA to support Missouri's use of blending. The State also submitted test results to support this request.

Blending involves the mixing of aflatoxin contaminated corn with non-contaminated corn to produce a blended mixture of corn that contains a level of aflatoxin suitable for animal feed use. The Act prohibits blending; thus, under normal conditions, FDA would not condone blending; however, the situation in Missouri does not appear to be normal--that is, the climatic conditions this past summer were clearly conducive to aflatoxin production.

In responding to Missouri's request, we first stated that the FDA action levels should serve as a primary means of controlling



aflatoxin-contaminated corn. We assured the State of Missouri that FDA would fully support the State's use of these action levels.

According to the State, however, Missouri farmers could still suffer major price reductions in the sale of corn containing aflatoxin and that the FDA guidelines would not in themselves, provide relief. Accordingly, we informed the State that if proper precautions are maintained, FDA would be unlikely to object to under State control-led-blending.

In sum, FDA understands the frustrations and concerns of the farmers in the Midwest as they struggle to recover from the devastating effects of this year's heavy rains and floods. We believe that the advice given the States affected by mycotoxins will help their farmers while still safeguarding consumer health.

Mr. Chairman, this closes my statement. My colleagues and I would be happy to answer any questions that you and the committee may have. Thank you.

(Attachments follow:)

## Appendix I

## Vomitoxin Advisory Levels:

1. 1 ppm on finished wheat products, e.g. flour, bran and germ, that may potentially be consumed by humans. FDA is not stating an advisory level for wheat intended for milling because normal manufacturing practices and additional technology available to millers can substantially reduce vomitoxin levels in the finished wheat product from those found in the original raw wheat. Because there is significant variability in manufacturing processes, an advisory level for raw wheat is not practical.
2. 10 ppm vomitoxin on grains and grain by-products destined for ruminating beef and feedlot cattle older than 4 months and for chickens, with the added recommendation that these ingredients not exceed 50% of the diet of cattle or chickens.
3. 5 ppm vomitoxin on grains and grain by-products destined for swine with the added recommendation that these ingredients not exceed 20% of their diet.
4. 5 ppm vomitoxin on grains and grain by-products destined for all other animals with the added recommendation that these ingredients not exceed 40% of their diet.

## Appendix II

## Aflatoxin Action Levels for Corn:

1. Corn containing in excess of 20 ppb aflatoxin destined for food use by humans, for feed use by immature animals (including immature poultry) and by dairy animals, or its destination.
2. Corn containing in excess of 100 ppb aflatoxin destined for breeding cattle, breeding swine, or mature poultry.
3. Corn containing in excess of 200 ppb aflatoxin destined for finishing swine (e.g., 100 lbs or greater).
4. Corn containing in excess of 300 ppb aflatoxin destined for finishing (i.e., feedlot) beef cattle.



American Soybean Association

STATEMENT BY LARRY DIEDRICH  
PRESIDENT, AMERICAN SOYBEAN ASSOCIATION  
BEFORE THE  
COMMITTEE ON AGRICULTURE  
SUBCOMMITTEE ON GENERAL FARM COMMODITIES  
U.S. HOUSE OF REPRESENTATIVES

SEPTEMBER 28, 1993

Good Morning, Mr. Chairman and Members of the Subcommittee.

I am Larry Diedrich a soybean, corn and hog producer from Elkton, South Dakota, and I am President of the American Soybean Association. I appreciate the opportunity to be here today to discuss the effects of the weather disasters of 1993 on soybean producers.

From South Carolina to South Dakota, 1993 has been a disastrous year for soybean farmers. From scorching heat and drought to flooding and early frost, soybean farmers have been in a struggle for survival with Mother Nature this year. And, I might add, many of us have been loosing!.

As you are aware, Mr. Chairman, the total extent of damage for this year's soybean crop will not be known until after harvest. However, producers are facing great yield losses due to weather

Washington Office

problems. In some parts of the country, soybean farmers are facing the deadly disease, Sudden Death Syndrome (SDS), where soybeans that have appeared to be healthy die suddenly due to rotten roots because of high soil moisture. This disease has traditionally plagued the southern portions of the U.S., but due to flooding and standing water in fields, states in the Midwest are being hit by SDS this year. Losses in soybean yields are common this year across the entire production area. For example, in South Dakota yields are projected to be down from 1992 figures of 28 bushels per acre to 22 bushels per acre; Iowa projected yields drop from 44 bushels per acre last year to 35 bushels per acre this year; and South Carolina's yields fall from 22 bushels per acre in 1992 to 15 bushels per acre in 1993. As you can see, even soybean farmers who have a crop to harvest may suffer yield damage during this unusual weather year.

I commend you, Chairman Johnson, your colleagues in Congress and the Administration for your responsiveness during these trying times. You have been accessible, caring and helpful during a period of crisis for many farmers. I want to thank you in particular for the prompt response we have seen in Federal assistance, and for the suspension of the 50.04 percent pro rate applied to disaster program losses since 1990. ASA feels the severity of crop losses this year justifies this action by the Administration and Congress. Also, removal of the August 1 deadline for disaster declarations has enabled producers who



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subsequently experienced crop losses or yield reductions due to early frost damage on late-planted crops to receive assistance in a timely manner.

Beyond this level of assistance, ASA feels there are other ways the Federal government can help producers to adjust to this difficult crop year. One action of importance to soybean farmers would be to waive assessment of the soybean marketing loan origination fee for the 1993 crop. Under your leadership, the FY 1994 Budget Reconciliation Act eliminates the origination fee on loans for soybeans and other oilseeds beginning with 1994 crops. However, given the need for low-interest financing for planting next year's crops, it would be beneficial if the loan origination fee could be waived for 1993 crop soybeans.

As you know, the full extent of crop losses will not be known until harvest is completed. However, based on assessments to date, it is apparent that crop damage is highly irregular, both between farms and on individual farms tracks, particularly in the Mid west. In some cases production on entire tracts have been lost due to prevented planting or to flooding.

Under current regulations, producers with complete losses on individual tracks may not be eligible for Federal assistance if total production on their farms does not trigger the disaster threshold. In ASA's view, individual tracks, rather than farms,

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should be used to determine eligibility for disaster aid in the event of catastrophic losses.

Another area of concern for producers affected by this year's disasters is compliance with conservation plans. Many producers in states affected by heavy rains and flooding will be unable to comply with requirements of their approved conservation plans. In some instances, compliance is simply not possible; in others, compliance is possible but not affordable this year. ASA feels that it is important that Congress and USDA take these unusual circumstances into account by allowing local Soil Conservation Service (SCS) to make case-by-case adjustments for producers trying to meet conservation plan requirements.

ASA also hopes Congress and the Administration will respond to the magnitude of these losses and demand for disaster assistance by moving quickly to reform crop insurance. We are pleased Secretary Espy has formed a crop insurance reform task force to address the obvious need for change in the current program. Soybean producers have long believed that crop insurance needs a major overhaul. In particular, soybean producers should be eligible for insurance for prevented planting, as is available for program crops. ASA will participate actively in the Secretary's task force and will work with any Member of Congress who is interested in reforming the current system.

Another area vital to agriculture is the rebuilding of our marketing infrastructure. ASA is concerned about the ability of many producers to bring their crops to market and the impact these dislocations will have on local prices for soybeans. State and local governments do not have the resources needed to respond to these problems. With harvest approaching, Federal assistance is needed immediately to remove transportation bottlenecks and repair damaged roads, bridges and storage facilities.

Even if all the problems I have mentioned area addressed, Mr. Chairman, soybean producers affected by this year's disasters will need several years of sustained market demand and higher prices to earn their way back to profitability. The best long-term action the Federal government can take is ratify NAFTA and complete negotiations on a good GATT agreement that expands market access for soybeans and soybean products around the world. ASA strongly supports these efforts, and will continue to work closely with the Administration and Members of Congress to reach a successful outcome in both GATT and NAFTA.

As you and other members of this Subcommittee well know, the disasters do not end when the weather subsides, when the flood recedes or when rains finally come. It will take years for many producers to recover. At these times, it is good to know that we have friends in Congress who do care if farmers continue to farm and who are willing to work with us to give us a chance to do just that. ASA appreciates your leadership and we look forward to working with you to address and overcome the long-term on lasting effects of the 1993 disasters on soybean producers. Thank you very much.

STATEMENT OF  
ROGER RIX,  
VICE PRESIDENT  
SOUTH DAKOTA WHEAT, INC.

BEFORE THE SUBCOMMITTEE ON  
GENERAL FARM COMMODITIES

SEPTEMBER 28, 1993

Mr. Chairman and Members of the Subcommittee.

I am Roger Rix, vice president of SD Wheat, Inc. and a member of the National Association of Wheat Growers. I would like to express my thanks to the committee for the opportunity to present testimony on issues of great importance to the wheat producers effected by this year's disaster.

The 1993 growing season began with a positive out-look, good stands and stable weather could produce a bumper wheat harvest. Unfortunately, cold, wet weather was provided by mother nature and by harvest time, producers faced several hardships, some of which were yet unknown to them.

The 1993 harvest was delayed due to slow maturity and fields too wet to harvest. Producers were faced with fine windows of time where cost efficiency and return from labor had to be weighed.

Once able to harvest, another dilemma hit: scab or head blight, a fungal infection, had effected most wheat fields in the spring wheat producing area of South Dakota. Scab effects the starch quantity and quality thereby potentially reducing the amount and consistency of the final product. The percent of scab in the wheat fields was varied, causing some producers to contemplate destruction of the wheat.

In addition to the outbreak of scab, tests revealed levels of vomitoxin (produced by the fungus which causes scab). Vomitoxin levels became an added concern to the marketability of the wheat.

The presence of scab and vomitoxin caused the markets to go more than just a little crazy. For several days, elevators in the north east quarter of South Dakota stopped buying spring wheat altogether. Farmers harvesting and planning to sell off the combine were stuck. However, as the elevators began to resume their purchases of wheat, farmers faced inconceivable discounts, ranging from \$.25-\$1.80 per bushel. Many producers felt they would be better off destroying the grain. Elevators were giving discounts for both scab percentage and vomitoxin levels. In addition to the discounts, base price for 14% protein spring wheat would vary greatly from elevator to elevator.

In an attempt to ride out the storm, producers harvested the wheat and stored it on the farm. Unfortunately for other producers, they did not have storage capabilities and were forced to sell at the prices offered or destroy the crop and look to crop insurance or disaster assistance.

Rix, page 2  
September 28, 1993

In an effort to help address the problem, USDA did announce the implementation of a "special" recourse loan. Both recourse and non-recourse loans are being utilized in South Dakota. According to the state ASCS office most of the loans were non-recourse loans, with the producer signing a statement stating the producer was responsible for meeting the loan requirements on quality. When asked if they see a possible problem with the non-recourse loans, the state ASCS office felt that with loan rates as low as they are, all loans would be paid back.

Additionally, elevators were having to cope with the problems of purchasing, storing and re-selling the grain. In order to protect themselves, some elevators purchased equipment to test for the presence of vomitoxin. However, to obtain exact levels of vomitoxin, samples would have to be sent to labs equipped to do such testing. Some elevators quit testing and chose to buy on the basis of dealing with the levels later.

The quality disaster provisions created within the disaster programs should have offered some consolation. The quality adjustments for 90, 91, and 92 have turned out to be a disappointment. Based on the grade rather than the price received, few producers will receive any benefit from the program. Presently the state ASCS office is working on adjustments for the 1990, 1991 and 1992 growing seasons, so, no figures were available as to the potential number and amount of the claims. The quality formula for 1993 is being reviewed by our state ASCS office, so comments regarding the efficiency of the disaster program are limited. However, the payment received by producers will not come close to the lost revenue that they have experienced.

In early August, the National Association of Wheat Growers urged USDA to implement a CCC feed wheat purchase and donation program. The implementation of this program could have limited the heavy discounts at the elevator, supported farm income and utilize wheat of lower quality. The implementation of this program would have produced another option for the producers as well as prevented downward pressure on corn and other feed grain prices which have also been heavily effected by this year's weather. This program would be extremely beneficial to have in place when such circumstances, as was the case this year, occur again.

In summary, nearly every spring wheat producer in the state of South Dakota has been effected by harvest delays and scab infection. Many producers believe that the situation provided an opportunity for the marketing system to take unfair advantage of them; extremely high discounts for both scab percent and vomitoxin levels; price differences for 14% protein spring wheat of a \$1.00 or more at bushel at elevators less than 50 miles apart; protein premium payments figured in tenth of a percent at one elevator and a full percent at another; and no recourse for the producer to take. Producers in the extreme north east corner of South Dakota are still waiting to harvest their grain. The investment of time and money has been made, yet the verdict on our return has yet to come in.

Thank you for the opportunity to relate these concerns, thoughts and ideas. I would welcome any question about my statement.

(Attachment follows:)





## JAMES VALLEY FARMERS ELEVATOR

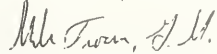
CONDE, FERNEY, STRATFORD, GROTON, SD  
 MAIN OFFICE - BOX 195 - GROTON, SD 57445  
 (605) 397-2347

The following is a example of a grain market and grain companies taking advantage of the current marketing conditions, which are impossible to say the least. Before vomitoxin levels were relaxed, big grain companies had some of the best opportunities in history to use a natural disaster for their own profits. On September 10, 1993, James Valley Farmers Elevator of Groton South Dakota put samples of a loaded twenty-six car unit train of spring wheat on the spot floor of the Minneapolis Grain Exchange. That day the spot market was quoted at between \$4.81 and \$5.21 per bushel for #1 spring wheat. The Groton train graded at a #1 average. The train consisted of twenty-two cars of 1992 wheat, and four cars of 1993 wheat. The opening bid for the Groton train was \$4.51 per bushel. Groton rejected the opening bid and bargained back and forth until finally accepting a bid of \$4.96 for the train with the stipulation that the bid was contingent upon good vomitoxin results for the train. The commission company doing the selling of the train for Groton did five car composites for the vomitoxin results. These results came back negative. The purchaser of the Groton train was a large grain company, who upon seeing the vomitoxin results demanded that the tests be rerun on a individual car basis. As it was 3:30 on a Friday afternoon that was impossible, so the purchasing grain company refused to take the train. Groton was then informed that the train did not trade, and would have to resell the train on Monday. Groton was then forced to start paying the railroad demurrage charges for failure to bill out their train. By Monday when Groton tried to resell the train the markets had dropped \$.15 per bushel. Also, Groton ran individual vomitoxin tests on the cars in the train. The tests were run by the same company and on the same samples as the five car composites from the previous Friday. Before the tests results were done, Grotons commission company offered to buy their train at a \$.40 discount to the Friday bid no matter what the vomitoxin results were. When the individual results came back, the average vomitoxin on the train was 3.2 parts per million. These same samples averaged less than two parts per million on the previous Friday when done as five car composites. Grotons commission company then offered to buy their train at a \$.70 discount, trying to take advantage of the high vomitoxin results. Groton refused to sell the train and had it reprobred and regraded. The same unit train still graded #1 but had a average vomitoxin of 1.3 parts per million. #1 spring wheat was quoted on the Minneapolis Grain Exchange at between \$4.73 and \$4.93 per bushel on September 15, the day Groton resold the train. The first bid on Grotons train was \$4.35 per bushel, yet the market indicated a lot higher level than that. Groton refused that bid and future bids until they finally sold the train for \$4.67. In the course of trying to sell this one train Groton spent \$3,120.00 in demurrage charges to the railroad, and received \$.27 per bushel, or \$25,520.00 less for the train then it originally sold for. If Groton would not have reprobred the train and accepted the bid based on the high individual vomitoxin results, they would have received \$.50 per bushel, or \$44,000.00 less than what the train was finally sold for.

Two things are very apparent from this experience. #1, the market was buying grain with very huge discounts based on a very unreliable test, to say the least. Grain companies will argue that the test variances work both ways. I think you will find if you audited the grain exchange books on the number of cars purchased without vomitoxin discounts, you will find that it is a very small percentage. Also, if you traced what the millers paid for their purchases and where the grain went, you would find, in my view, that all the grain went to the same place, whether it had vomitoxin or not.

The second conclusion I drew from this experience was that, although the spot market quotes prices for #1 milling wheat, very few cars actually sell at these levels. In the middle of June of 1993, the spot market quit quoting what range cars were selling for on the spot floor, instead only quoting what #1 wheat was selling for. On a lot of days, one car might sell at the top of the spot, but the other 99.9% sell at levels considerably lower than that. It is my understanding that the millers base their flour sales off of the top of the spot market. I find this current situation very convenient for the millers. They can buy our wheat at cheap prices, yet command a much higher price for their finished products. I think the spot markets should be forced to show the whole price range on what cars are selling for on that day. The only way to be able to truly market grain, is to know what prices the market is willing to pay for the different qualities being sold.

Mike Trosen, General Manager



James Valley Farmers Elevator  
Grotton, South Dakota 57445



## Minnesota Association of Wheat Growers

2600 Wheat Drive • Red Lake Falls, MN 56750

Telephone: 218/253-4311 or 800/242-6118 • FAX 218/253-4320

Testimony by Pete Kappes, Minnesota Association of Wheat Growers,  
National Association of Wheat Growers  
for the

U.S. House of Representatives Committee on Agriculture  
Subcommittee on General Farm Commodities

Hearing on federal disaster assistance, wheat quality losses  
September 28, 1993, Washington, D.C.

Mr. Chairman, members of the Subcommittee, my name is Pete Kappes, representing the Minnesota Association of Wheat Growers. The MAWG is an organization of about 1,000 wheat growers in the state and is affiliated with the National Association of Wheat Growers. I farm near Ada, Minn., and when Mother Nature cooperates I try to grow soybeans, sunflowers, barley, and wheat.

The waterlogged, disease-burdened 1993 growing season may be the biggest crisis to ever hit Northern Plains wheat growers. The drought of 1988 comes to mind, but even then, there were no price discounts that shut down wheat and barley sales, no special equipment was needed to get into muddy fields, and harvesting wasn't completed with a matchbook. That all occurred in Minnesota this growing season.

Many farmers were looking forward to a good wheat crop in early July. However, rains during grain flowering in mid July resulted in severe wheat scab. The scab disease also produced a contaminant in wheat called vomitoxin.

This year's spring wheat production in Minnesota was estimated at about 86 million bushels earlier this month, which would be 38 percent below last year's production of 137 million bushels. The average wheat yield in Minnesota this year is estimated at 35 bushels per acre, compared to the 50-bushel yield average last year. We expect final wheat production and the average yield in Minnesota to slip further from these early estimates.

Virtually all wheat in Minnesota was affected by scab and vomitoxin to a varying degree. Some growers had minimal scab damage, others had to zero out their wheat because of it. Some growers had wheat that tested under 2 parts per million for vomitoxin, others had double-digit vomitoxin levels. The MAWG estimated last month that wheat yield losses of 30 percent from expected production will result in \$130 million in losses to wheat growers in Minnesota. Wheat quality discounts due to scab and vomitoxin will result in an additional \$130 million in lost farm income. Total projected wheat losses of \$260 million are certain. By the time additional abandoned wheat acreage and quality discounts are added up, total losses will likely exceed \$300 million. As I mentioned before, some farmers in Minnesota have turned to burning their failed wheat acreage to clear ground for next year. That's one of the most difficult things a farmer will ever have to do.

Panic over scab and vomitoxin hit the grain marketing system early during the harvest season. Some elevators stopped taking wheat altogether for awhile. Early on there were highly variable grain discounts at grain elevators. There were discounts for total damaged kernels, including scab, and discounts for vomitoxin. Lighter kernels caused by scab generally resulted in wheat with a lower test weight. Thus, farmers were also subject to discounts for low test weight grain.

Here are actual price quotes for two Minnesota elevators at the end of August: Elevator A had discounts from 8 to 28 cents for 55 to 50 pound wheat. Elevator B had discounts from 8 to 26 cents for 55 to 50 pound wheat. Elevator A had a discount of 8 cents for 4 percent scab damage and 30 cents for 10 percent damage. Elevator B had steeper discounts, with 49 cents subtracted for 4 percent scab damage and 65 cents off for 10 percent damage. Elevator A had a discount of 15 cents for grain with 3 to 10 parts per million vomitoxin, and a discount of 25 cents for grain with vomitoxin over 11 parts per million. Elevator B had different discounts for different vomitoxin levels as compared to elevator A. Elevator B had a discount of 20 cents for vomitoxin over 2 parts per million, and 35 cents for vomitoxin over 4 parts per million.

Growers with infected wheat generally could expect a price in the \$2 range at best. Those with severely infected grain faced severe discounts. I know for a fact that a former board member of our association received a bid for some of his infected wheat that was 64 cents per bushel. Farmers who had a commitment to sell wheat under forward contracts were hit hardest by grain discounts.

Grain discounts are less variable now, particularly after the Food and Drug Administration liberalized its vomitoxin guidelines. That didn't help price much, however. Wheat prices and protein premiums dropped after the market perceived that more grain would enter marketing channels following the FDA decision. Discounts for vomitoxin have dropped, although some elevators have kept the same vomitoxin discounts in place to protect themselves against an influx of infected wheat.

Since scab, vomitoxin, and test weight were interrelated, we question why grain was triple discounted. Vomitoxin discounts must be particularly questioned, considering that discounts were based on decade-old studies; suggested guidelines, not firm laws; and questionable testing procedures. Extension plant pathologists at North Dakota State University and the University of Minnesota admit that vomitoxin tests are not entirely accurate, and that the hurried manner in which tests began meant that some inspectors may not have been adequately trained in vomitoxin testing procedures. Consider also that if the blending and milling process reduces or eliminates vomitoxin levels in grain, then why discount it?

We appreciate the availability of federal crop insurance and quality loss adjustments under the federal disaster assistance program. Under federal crop insurance, price adjustments were not consistent. Pricing mechanisms and adjustment levels for losses differed in areas. There was no definite direction as to what determines number two grade wheat, for example, or for determining sample grade wheat value. Further, federal crop insurance doesn't have a diminimus yield, such as the ASCS diminimus yield of 4 bushels, that is needed to help producers determine whether to harvest.

A problem under disaster assistance is that a farmer with crop losses may not qualify if he has a lower farm ASCS yield. For example, a producer has a yield average of 40 bushels per acre despite yield and quality losses. His average ASCS yield is determined to be 32 bushels per acre. He had crop losses, but not enough to qualify for disaster.

There is a problem under quality adjustment factors in that the posted county price doesn't reflect actual market conditions. The affect of quality problems on the value of wheat must be fully considered. Further, as it stands the ASCS will not make quality adjustments until grain is sold. We believe quality adjustments should be made on stored wheat. That way federal disaster assistance would be similar to federal crop insurance, and disaster payments based on price and grade could be calculated all at the same time.

Aside from those problems to be worked out, we have several recommendations in light of this year's scab problem:

1. Assimilate quality adjustment factors. We would like to know why ASCS did not use quality adjustment procedures similar to the FCIC. Further, why is there a difference in grade adjustment factors for wheat and corn? Sample grade wheat has an adjustment factor of 75 percent, while sample corn has a grade adjustment factor of 60 percent.
2. We question whether Northern Plains wheat growers would have received quality loss adjustments if the Corn Belt had not been flooded. Once again, the debate over federal crop insurance and disaster assistance is resurrected. Let 1993 be the impetus for federal crop insurance reform. We strongly urge Congress to enact a viable, attractive federal crop insurance program using the savings derived from eliminating disaster assistance programs. Participation should remain voluntary, however, and should not be required for participation in farm programs, including conservation compliance.
3. Implement a study on this year's grain discounts. Most infected grain we farmers sold at feed prices will not end up in feed channels. It will be sold into milling channels. Wheat growers would be very interested in knowing what the real value of their wheat is when it is milled.
4. We must not allow the scab disease to steer U.S. wheat down the same road as the Irish potato famine in the 1840s. Federal research on scab and vomitoxin is needed, including the development of resistant wheat varieties, production management practices to minimize risk, the effect of vomitoxin in animal rations, and the use of infected grain for ethanol.
5. Create a feed wheat program for growing seasons such as this, to isolate poor grain. This would help prevent discounts on the farmgate price and protect our export reputation with overseas wheat buyers.
6. Finally, we are concerned that the United States is subject to grain infected with scab and vomitoxin coming down from Canada, when U.S. marketing channels are burdened with our own infected wheat. Measures must be taken to assure similar quality and inspection standards, as well as to ensure that our marketing system will not be swollen by poor quality grain from Canada in years such as this, which may result in price injury to our own producers.

Thank you, Mr. Chairman and members of the Subcommittee, for allowing this opportunity to hear our concerns. We look forward to your working with the Administration in addressing these matters.





## National Family Farm Coalition

110 Maryland Avenue, NE, Suite 307 • Washington, DC 20002 • (202) 543-5675 • Fax: (202) 543-0978

**TESTIMONY OF DIXIE HENDRICKS - CORONA, SOUTH DAKOTA  
U.S. HOUSE OF REPRESENTATIVES COMMITTEE ON AGRICULTURE  
SUBCOMMITTEE ON GENERAL FARM COMMODITIES  
HEARING ON FEDERAL DISASTER PROGRAM  
SEPTEMBER 28, 1993 10 A.M.**

Goodmorning. My name is Dixie Hendricks, and I farm with my husband and children in northeast South Dakota, west of Corona. I am testifying today on behalf of the National Family Farm Coalition, a coalition of over three dozens farm, church and citizens groups striving for the revitalization of Rural America. I am also testifying on behalf of Dakota Rural Action, a South Dakota-based membership organization of rural people working to give people a voice in decisions affecting their lives. Dakota Rural Action is a member group of the Coalition.

The natural disaster of 1993 in the midwest and south is one that is tough for most farmers to weather - coming out of the man made disaster of federal farm policy of the last ten years. Most farmers who survived the farm crisis have no margin to fall back on this year to make up the lost income due to lost crops or prevented planting. And the federal crop insurance program does not serve as a good risk management tool for farm businesses, making us very dependent on the federal government for our survival.

That's why we are thankful that Congress and President Clinton authorized 100 percent payment of the federal farm disaster formula, which covers our losses at about 42 cents on the dollar. While this disaster coverage is the best case scenario and won't keep some people in operation to put in a crop next spring, it is a huge improvement over the disaster payment limit of the last few years. Many Dakota Rural Action members and other farmers around the country are in their second, and in some cases, third year of crop losses due to weather. They have dealt with poor crop insurance and have received only half of the disaster program payment which covers losses at 21 cents on the dollar. Adequate disaster relief will do more for rural America and mainstreet businesses than any jobs bill or employment package that Congress could pass.

I would like to discuss some remaining concerns we have about the

federal disaster program and emergency programs meant to help farmers.

We see that our local ASCS offices are making loss allowances for poor quality wheat, corn and other grains. This is very important this year, since some of our small grain harvests are selling at a very low price due to vomatoxin or aflatoxin. In some cases, local elevators won't accept this grain. The quality adjustment payment will help cushion this lost income.

We urge Congress to take similar steps to make allowances for lost hay quality. Many livestock producers have lost alfalfa hay quality, where the yield is the same but the quality is greatly reduced. Some farmers and ranchers feed the hay out themselves, and some use the hay as a cash crop. Either way, lost quality means lost income. South Dakota is a leading livestock production state, and it is critical that disaster assistance fairly address the needs of these producers, whose losses aren't covered with federal crop insurance. Attached to my testimony is a proposal from our members for determining lost hay quality, based on feed-related value

Some of our local ASCS offices have been telling farmers that they will have any advanced deficiency payment deducted out of their disaster payment. Yet Congress passed a measure that requires the pay back to be delayed until January of next year. Many farmers don't know this and therefore, their disaster payment will be greatly reduced. Dakota Rural Action and the National Family Farm Coalition urge you to drop the pay back requirement, since it will mean more lost income and more farm failures. We will also see more delinquencies on farm loans if the pay back requirement stands.

We also urge Congress to amend the disaster program to address individual market differences for specialty crops. A person raising specialty crops is paid based on whether the crop is conventionally or organically marketed. We recommend that there be a quality adjustment in the federal disaster program for organically grown and marketed produce.

In regards to the drought in the south, the poultry growers there are almost all contract farmers who don't actually own the birds. When the heat killed hundreds of thousands of birds, these contract farmers couldn't qualify for any program because they don't own the birds. However, the family farm Tysons could apply for the loss. The contract farmer has lost his flock and

his income, yet his indebtedness and bills remain the same. They need to be allowed the status to apply for federal disaster relief so that they have some income to make payments.

Another recommendation we have for improvement of the federal disaster program is a fair determination of actual crop losses and prevented planting for those farmers enrolled in the Integrated Farm Management Program Option - IFMPO. Some of our members are enrolled in this program and report that county ASCS offices don't know how the disaster program will be applied to them. These producers are enrolled to establish crop rotations and other soil conserving practices, but there is confusion about whether a crop that couldn't get planted will be counted as prevented planting or part of their rotation. We recommend that USDA and Congress ensure that enrollees of this program are not penalized for their conserving practices, and that they be allowed to apply and receive disaster assistance to the full extent possible.

On the credit side, my husband and I have a cow-calf operation of eighty head of stock cows which calve from March to May. When the rain came this spring, the small creek running through our pasture flooded more than anything we'd seen in our twenty two years of farming here.

We lost ten calves when the cows forded the creek and the calves followed. They lost their footing in the rapid flowing water and drowned. This loss amounted to over \$4,000. I went to the local Farmers Home Administration office to see if the emergency loan program could help. Here is the huge application packet that I was given -- it's sixty seven pages, more like a booklet. Also, I had to fill out the same cash flow, crop production history, livestock sales records and expenses for the previous five years, an enormous paperwork burden. I would have had to fill several of these sixty seven pages out five times for this five previous years' records. I am the person in our farming operation that does the paperwork, and I also handle books for a local business each day, so paperwork is nothing new to me. Most people who are discouraged from applying for an FmHA emergency loan because of the huge paperwork mess.

The FmHA emergency loan program is the same bureaucratic nightmare that it has been for the last several years. A farmer is supposed to show a loss of 40 percent for each commodity in order to be eligible. At the same

time, this farmer is supposed to show a positive cash flow and positive repayability. The 10 calves we lost didn't represent a forty percent loss, but we were able to show a positive cash flow. We recommend that the eligibility requirements for emergency loans be changed to be workable for actual farm loss situations.

Many farmers in South Dakota lost much more than forty percent of their crops last year and this year. If the program doesn't change from last year, most won't get their loans in time for spring planting in 1994. Last year in Deuel County, South Dakota, seventeen producers applied for FmHA emergency loans in the fall of the year, but six months later still didn't have word from their FmHA office. This is supposed to be a "farmer friendly" administration, and we believe the FmHA emergency loan program must change to live up to this claim. I wonder if the foreign countries receiving billions of dollars in assistance from the U.S. government have had to go through as much paperwork as America's family farmers.

Our major concern is that farmers who won't be able to make their principal and interest payments to the FmHA this year due to the disaster be allowed to defer the payments and put them on the end of their loan, without having to become delinquent. This could be done by allowing producers who are not yet delinquent, but whose payments are coming due and who can demonstrate an inability to pay due to the weather disaster, the ability to defer before becoming delinquent. Our members have met with the state director of FmHA in South Dakota and the acting national FmHA director and there are differences of opinion as to whether the law now allows FmHA to do this. There is no central policy for this type of deferral, but it is a common sense forbearance option that the Farm Credit System is now using in disaster areas.

Many dairy producers in my area have had their FmHA payments taken out of their milk checks, so they are current on their loans, but they are in a very tight spot financially. We recommend that those who can demonstrate lost income due to the disaster be allowed to defer payments in 1994 to allow them time to get back on their feet this year.

We ask Congress to pass legislation allowing this type of deferral for FmHA loans, without forcing a farmer to become delinquent and go through the very costly, time consuming and bureaucratic loan servicing procedures within FmHA. Once that happens, a producer's credit standing is

compromised and they often look at bankruptcy as a viable option. We are working with some commercial lenders in our state to see if they too would consider this type of policy for disaster cases.

We also recommend that this deferral apply to FmHA loan payments from 1992 that weren't able to be made due to the disaster. Some of them are just now receiving their FmHA loan servicing packet, but could avoid a lot of headache and personal expense - not to mention the government's expense - if the payment were simply put at the end of the loan by extending the loan. Of all the disaster-related reforms we are seeking, this one is perhaps the most important, in that it would go the farthest to keep farmers on the land and government expenses down.

A word about federal crop insurance. Many of our members have made suggestions for federal crop insurance reforms, but so far, very little has been done to reform the program for 1994. We want a risk management tool that we can pay for ourselves, that actually protects against losses in a way that makes the premium worth paying. The present program doesn't do this. If we had a solid federal crop insurance program, we wouldn't need a federal farm disaster program, and we urge you to take steps to change the program soon, before another year goes by.

I want to emphasize how important this federal disaster relief is. Nationally, billions of dollars have been lost in farm income, which means many rural communities will die. According to the ASCS, as of September 10, South Dakota's estimated agricultural losses totalled \$725,737,488. Since then, an early frost has occurred and our losses will likely exceed \$1 billion. In the five county area around me, we have lost four implement dealerships, and a fifth will likely go under next year. We continue to lose mainstreet businesses like the Milbank clothing store which has closed and reopened as a second hand store because there is more of a market for used clothing.

The failure of our federal farm program to allow America's family farmers to earn a decent living in the marketplace is the underlying cause of rural poverty. We want our price from the marketplace, not the government. Farmers and ranchers could weather a natural disaster if they had adequate payment for their production in good years. But we have no cushion, no reserve, thanks to the 1985 and 1990 farm programs. You have a chance to change this when you write the 1995 farm bill. We urge you to look seriously at how cost effective it is for the federal government to go from disaster to disaster when our nation's food security is at stake.

(Attachment follows:)



## *Dakota Rural Action*

Box 549 • Brookings, South Dakota 57006 • 605-697-5204

September 22, 1993

Honorable Tom Daschle  
U.S. Senate  
317 Hart Office Building  
Washington, DC 20510

Honorable Larry Pressler  
U.S. Senate  
283 Russell Office Building  
Washington, DC 20005

Honorable Tim Johnson  
U.S. House of Representatives  
2438 Rayburn Building  
Washington, DC 20515

Dear Senator Tom Daschle, Senator Larry Pressler and Congressman Tim Johnson,

Dakota Rural Action believes the hay producer is being left out of the quality disaster program. Just like the corn, soybean and small grain producer, the hay producers crop has been affected by this disaster year. DRA urges you to work to include the quality of hay in the other crop quality disaster declarations.

We understand that there are some questions about how the quality of hay and the disaster payment for this quality should be assessed. As requested by Senator Daschle's office, Dakota Rural Action has come up with the following formula for measuring hay quality lost due to the disaster.

The universal measurement for the quality of hay is Relative Feed Value (RFV), which can be determined through an inexpensive test. There are numerous labs to get hay tested. In South Dakota the most well known is South Dakota State University.

County Extension Agents can determine the average quality of hay harvested over the past 3 to 5 years. This RFV average can then be used as measurement for quality lost by hay producers in a specific county. Dakota Rural Action believes each county should come up with their own quality and production averages.

**What follows is the portion of our formula to figure the county averages.**

We will use Deuel county as an example for this formula. Deuel County's average alfalfa yield set by the ASCS committee is 2.3 tons per acre. We believe that this is too low of a county average, so for our purposes we are using 3 tons per acre as the average crop in Deuel County.

Average yield of the first cutting is 1.5 tons, the average on the second cutting is 1 ton and on the third is .5 tons.

Cutting	RFV	Yield/acre	Total RFV
first cutting	150	1.5 tons	225
Second cutting	175	1 ton	175
Third cutting	200	.5 ton	100

The average acre of alfalfa hay ground in Deuel County produces 500 RFV units on an average year.

#### Figuring the price of hay and the payment per RFV unit

For our formula we used a hay price of \$60 per ton, this is much lower than the price alfalfa hay is bring in the market which is between \$75-90 sold out of the field. We used our \$60 price to come up with a 35 cent value for each RFV unit using the following formula.

$$\text{Ton Price } (\$60) * \text{Average per acre yield (3 ton)} / \text{total RFV per acre (500)} = .35$$

With this price established and 500 RFV units as the county average, the following formula can be used: Using the current disaster figure of 65 percent we estimated that the government would base thier payment on 325 RFV units in Deuel County. 65% of 500 RFV units = 325 RFV

The ASCS, another agency or the producers would be required to gather hay sample from each cutting and get these samples tested. The average of these samples would be multiplied by the county yield and the difference between the 65 percent factor and the producer's total RFV hay sample units would be paid at the 35 cent rate per RFV unit.

$$\text{Example - 65 percent figure (325) - (Producers average RFV units (100) * County average yield (3)) = 25}$$

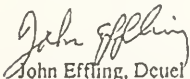
$$25 * .35 = \$ 8.75 / \text{acre}$$

The government should treat molds and toxins in hay the same way they treat these in grain. In other words there should be no value for hay infected with toxins just like there is no value for grains infected with toxins.

Grass hay and mixed hay should also be eligible for the quality disaster benefits. The county average RFV per acre units should be factored down for these hays.

We look forward to your response. If you have any questions contact me at 795-3741.

Sincerely,



John Effling, Deuel County DRA Chairperson  
RR 1 Box 44  
Strandburg, SD 57265



**National Corn  
Growers Association**

Washington Office  
201 Massachusetts Ave., N.E., Suite C-4  
Washington, D.C. 20002  
202/546-7611

TESTIMONY OF

ROBERT GEBHARDS

NATIONAL CORN GROWERS ASSOCIATION

TO THE SUBCOMMITTEE ON GENERAL FARM COMMODITIES

U.S. HOUSE OF REPRESENTATIVES

SEPTEMBER 28, 1993

Mr. Chairman and members of the subcommittee, thank you for the opportunity to present the views of the National Corn Growers Association (NCGA). I am Robert Gebhards, a corn and soybean farmer from Rock Port, Missouri.

NCGA applauds Congress and the Administration for their prompt response to weather-related crop losses. Farmers needed the assurance that disaster assistance would be available to offset financial losses this year. However, the National Corn Growers Association is committed to an improved multi-peril crop insurance program that would eliminate the need for ad hoc disaster assistance in the future. We support changing federal budget procedures to include crop loss disaster assistance as an annual budget outlay, and redirection of the budgeted funds to improve crop insurance.

1993 has been a year many of us would like to forget. The western Corn Belt still is experiencing flooding and unusually cool weather. Farmers in the Southeast have lost crops to drought. Even where stands of corn have looked good, farmers are discovering that ears are not filled, so yields will not be as good as expected. Now, wet fall weather is making harvest difficult.

One of the inequities with disaster assistance that has become apparent this year is that, under current rules, a farmer could have a total loss on acres of production, but not qualify for disaster assistance because of production elsewhere within the same farm number. In some instances, local ASCS offices have required farmers to combine operations in a single farm number, even though the producer might have preferred a different arrangement. We support a change in the computation of disaster assistance eligibility to farm tracts rather than by farm numbers.

Because reduced crop quality also cut farm income, we support the decision to provide disaster assistance for quality losses. Quality adjustments should encourage producers to obtain the best possible price for their crop while providing additional income protection.

Many farmers lost farm-stored grain and their storage facilities from flood damage. By the time the danger became apparent, farmers were unable to move the grain because of lack of time and transportation capacity and because some commercial elevators were unable to accept delivery. This subcommittee should recognize the extreme weather conditions that led to these losses and recommend that the Commodity Credit Corporation forgive loans when the collateral was lost to flooding or excessive rainfall.

Flood waters caused tremendous damage to farmland and to the existing water retention structures that enabled the land to be cultivated. Farmers want the opportunity to return to their land, but they need the assurance that federal, state and local governments will work with farmers to repair levees and damaged fields and amend, if necessary, their soil conservation compliance plans.

Whenever crops are stressed by extreme weather, the crops are more vulnerable to insect damage and molds and other fungi. This year the northwest Corn Belt had too much moisture and below normal temperatures while the Southeast was hot and dry.

Aflatoxin is a toxic waste product of at least two of the molds that can infect stressed corn. This year aflatoxin has been reported in southeastern Missouri. Because aflatoxin is unusual in this region, farmers and grain dealers were initially uncertain about proper handling procedures. Much of the confusion could be eliminated if the federal government would approve the practices and procedures that are available in the states where aflatoxin is a more common problem.

Corn farmers recognize the dangers posed by aflatoxin and want to handle affected corn in the most responsible manner. As farmers, we have the most direct stake in assuring our customers, both domestic and foreign, that the corn they buy is of the highest quality and is safe for the use intended. At the same time, farmers have to be able to market grain for the best available use. Sometimes federal rules and regulations make this difficult, if not impossible.

Federal law imposes a number of restrictions on the use of aflatoxin-contaminated corn. Basically, the Federal Food, Drug and Cosmetic Act prohibits blending corn that has more than 20 parts per billion of aflatoxin with

uncontaminated corn. The Food and Drug Administration (FDA) has permitted blending on a case by case basis when the grain is intended for feed for mature livestock within a state's borders. Likewise, as a general rule, FDA prohibits treating corn for livestock feed use, but the practice is allowed in a few states. These prohibitions and exemptions lead to confusion for farmers and first purchasers of grain. What we need is a responsible and consistent approach that reduces risk.

Corn processors carefully monitor corn that will directly enter the human food chain. Federal law requires the Federal Grain Inspection Service to test all corn exports for aflatoxin unless the buyers and sellers waive such tests. But the majority of corn grown in the United States is used for livestock feed, and with proper treatment, this use is still appropriate for aflatoxin-contaminated corn.

The most common treatment available for aflatoxin is ammoniation. This process is safe and effective for feed use, but has not received FDA approval. The Agricultural Research Service conducts a grant program for research to eliminate aflatoxin in corn, peanuts, cottonseed and tree nuts. I served as the corn growers' representative on the Technical Advisory Committee that reviewed grant proposals. During the two years I served on the committee, I had the opportunity to ask scientists from all over the nation whether detoxification with anhydrous ammonia was effective. They all said it worked.

Three states -- Texas, Georgia and North Carolina -- allow corn with aflatoxin to be decontaminated by ammoniation. I suggest if this process was approved nationwide, it would encourage the best use of the corn. It could be treated and fed without any harm to livestock which would eliminate concerns of aflatoxin in our food and export chain. The news media would have no reason to sensationalize every outbreak of a naturally-occurring toxin.

This would economically help the individual farmer, the commercial handlers, the export business, and, as a result, the entire nation.



We have reviewed the 1992-crop corn situation with a number of grain handling and processing groups. Based on the weather patterns in the corn belt, we do not believe the necessary conditions were present to cause an appreciable aflatoxin problem in this area where the vast majority of U.S. corn is produced. We are pleased that in those scattered areas which have seen problems, FDA has approved a temporary blending program and reiterated its guidelines which provide a safe feed outlet for most affected corn. Food processors comply with the FDA guideline limiting food-use corn to no more than 20 ppb aflatoxin, and FDA's actions assist in insuring that affected corn is not offered to food processors.

While aflatoxin occurs in the U.S. corn crop only infrequently, the grain industry has supported research efforts to identify the causes of aflatoxin formation and develop ways to prevent its formation in field crops. Corn growers and processors are active participants in the Multi-Crop Aflatoxin Working Group, an alliance of producers, processors and marketers of peanuts, corn, cottonseed and tree nuts, formed to seek scientific solutions to the problems caused by natural contamination of crops with aflatoxin.

This group brings together industry and USDA's Agricultural Research Service in research programs aimed at eliminating aflatoxin in field crops by developing resistant plant varieties, benign and naturally-occurring bio-competitive organisms and systems to interrupt the genetic pathway which leads to toxin formation by molds. A list of members of this group is attached to my testimony, along with the most current list of projects supported by ARS funding. We appreciate the strong support of the Agriculture Appropriations subcommittee for this effort, and urge your continued support as well.

## MULTI-CROP AFLATOXIN WORKING GROUP

American Corn Millers Federation  
600 Maryland Avenue, S.W.  
Washington, D.C. 20024

California Pistachio Commission  
1915 N. Fine Avenue  
Fresno, California 93727

Corn Refiners Association, Inc.  
1100 Connecticut Avenue, N. W., Suite 1120  
Washington, D. C. 20036

National Corn Growers Association  
1000 Executive Parkway, Suite 105  
St. Louis, Missouri 63141

National Cottonseed Products Association  
P. O. Box 12023  
Memphis, Tennessee 38182

National Cotton Council  
1110 Vermont Avenue, Suite 430  
Washington, D. C. 20005

National Peanut Growers Association  
P. O. Box 1282  
Dothan, Alabama 36303

National Peanut Council  
1500 King Street, Suite 301  
Alexandria, Virginia 22314

Prune, Raisin, & Walnut Marketing Board  
3445 N. First, Suite 101  
Fresno, California 93726

## MULTI-CROP AFLATOXIN WORKING GROUP FUNDING - FY 1993

Corn

Ecology of *Aspergillus flavus* Under Cultural Practices for Corn in Iowa. D. McGee. Iowa State University, Ames, IA

Identification of Molecular Markers Associated with Genes for Preharvest Resistance in Corn to *Aspergillus flavus* and Aflatoxin Production. T. Rocheford. U. of Illinois, Champaign, IL

Development of an Integrated System for Corn Production to Reduce the Risk of Preharvest Contamination by Aflatoxin. N. Widstrom, USDA, Tifton, GA

Peanuts

Aflatoxin Concentration in Peanuts as Affected by Calcium and Boron. D. Hartzog, Auburn University, Auburn, AL

Characterization of a Gene Delivery System Capable of Introducing Aflatoxin-resistance Genes into Peanut. J. Demski, Georgia Experiment Station, Griffin, GA

Breeding Peanut Cultivars with Resistance to Preharvest Aflatoxin Contamination. C. Holbrook. USDA, Tifton, GA

Genetic Engineering of Peanut for Fungal Resistance. P. Ozias-Akins, University of Georgia, Tifton, GA

Development of transgenic peanut varieties with enhanced resistance to *Aspergillus flavus*. A. Weissinger. N.C. State University, Raleigh, NC

Cotton

Aflatoxin Development in Modules During Field Storage in the Mid-South. W. Batson, Mississippi State University, Mississippi State, MS

Prevention of aflatoxin contamination of cottonseed through production of transgenic cotton expressing antifungal genes. C. Chlan, University of Southwestern Louisiana, Lafayette, LA

Management of aflatoxin contamination of cottonseeds using beneficial bacteria. I. Misaghi, U. of Arizona, Tucson, AZ

Pre-Harvest Monitoring and Control of Aflatoxin Formation in Cottonseed. D. Park, University of Arizona, Tucson, AZ

Tree Nuts

Breeding for Resistance to Aflatoxin Contamination in Almond. T. Gradziel, University of California, Davis, CA

Genetic Engineering of Tree Nut Crops for Control of Aflatoxin. G. McGranahan, University of California, Davis, CA

Aflatoxin Control in Tree Nuts: Ecological Relationships, Agronomic Practices, Biological Control and Characterization of Contaminated Nuts. T. Michailides, U. of California, Berkeley, CA

Metabolic Pathway and Anti-Fungal Genes

Immunochemical Studies on Enzymes Involved in the Biosynthesis of Aflatoxin. F. Chu, U. of Wisconsin, Madison, WI

Molecular Genetic Approaches to Preharvest Elimination of Aflatoxin Contamination. J. Linz, Michigan State University, East Lansing, MI

Molecular Approaches to Control Aflatoxin Contamination of Food Sources. G. Payne, N.C. State University, Raleigh, NC

Cloning and Expression of Genes Encoding Bacterial Chitinases for Control of Aflatoxin-producing Fungi. S. Tuzun, USDA, New Orleans, LA

Resistance to Aflatoxin Producing *A. Flavus* Group Fungi in Transgenic Peanut Plants Overproducing Osmotin and Osmotin-Like Proteins. R. Bressan, Purdue University, West Lafayette, IN



## **National Grain and Feed Association**

### **Testimony of the**

### **National Grain and Feed Association**

### **Before the**

### **Subcommittee on General Farm Commodities**

### **House Committee on Agriculture**

**September 28, 1993**

Mr. Chairman and members of the Subcommittee, we appreciate this opportunity to discuss the impact that naturally occurring mycotoxins, such as deoxynivalenol in wheat and aflatoxin in corn, have on the grain handling and marketing system. I am Kendell Keith, President of the National Grain and Feed Association. I am accompanied by Randall C. Gordon, NGFA's Vice President for Communications and Government Relations, and Thomas C. O'Connor, NGFA's Director of Technical Services.

The National Grain and Feed Association is the national nonprofit trade association of more than 1,000 grain, feed and processing firms comprising 5,000 facilities that store, handle, merchandise, mill, process and export more than two-thirds of all U.S. grains and oilseeds utilized in domestic and export markets.

Our members are committed to doing their part to ensure that American consumers and our export customers are furnished with a wholesome and safe food supply.

This commitment is embodied in our Association's Mission Statement, which states in part that the NGFA is dedicated to "*[e]nsur[ing] a wholesome, high-quality and abundant food supply for domestic and world consumers....*" That Mission Statement is buttressed by two of our Association's specific Member Goals, namely to:

- preserve the U.S. system for ensuring a safe and high-quality food supply responsive to customer needs; and
- communicate with the public and government to improve the image and promote the role of the grain-based food system that provides the most abundant, most economical and safest food supply the world has ever known.

Geographically, the incidence of naturally occurring mycotoxins varies greatly from crop year to crop year. Their occurrence is not a perennial or pervasive problem. In fact, even when weather conditions within a geographic region create the possibility of mycotoxins in a given crop year, the actual occurrence and extent of contamination vary dramatically.

Since this year's weather conditions created sporadic occurrences of aflatoxin and vomitoxin, I will confine my remarks to our industry's response to these two challenges. However, the same principles apply to situations of a similar nature, in which grain elevator managers, feed millers and processors confront the task of handling grains and oilseeds in accordance with the law while meeting the quality needs of end-users, managing market risk and providing a fair competitive market for weather-damaged grain delivered by our nation's farmers.

#### Aflatoxin

Let me start by discussing aflatoxin.



The Food and Drug Administration has provided clear regulatory guidance concerning the handling and merchandising of grain containing aflatoxin to provide a safe feed outlet for affected corn. Most recently, in 1988 FDA revised its policy guidance concerning actionable levels of aflatoxin applicable for that and future crop years. The agency also provided procedures — limited to 1988-crop corn containing aflatoxin — permitting such corn to be blended under FDA-prescribed conditions and supervision for subsequent use as feed for approved species of beef cattle, swine and poultry. It is our understanding that FDA has reinstituted its 1988 blending policy this year for certain geographical regions requesting it to provide a safe feed outlet for corn containing aflatoxin.

Our members comprehend and support their regulatory obligations to protect and ensure food and feed safety. Indeed, there are strong business incentives for doing so. Our members are very alert to the quality demands of U.S. consumers and foreign buyers and take this obligation seriously.

There are powerful economic incentives for elevators to do what they can to avoid handling corn containing aflatoxin that cannot be directed to FDA-approved uses. Elevators that take delivery and commingle corn containing aflatoxin at levels exceeding legal limits risk having the contents of their entire elevator seized and condemned by state and federal authorities. Further, grain company contracts typically contain clauses that require grain sold to be compatible with FDA regulations; shipments not meeting those standards are deemed to be "unmerchantable," and are rejected by receivers at considerable expense to the shipping elevator. Indeed, the sample grain purchase contract developed by our own Association contains such a "merchantability" clause. I would like to submit a copy of this sample grain purchase contract for the record.

Once delivered by farmers, elevator managers institute grain drying, aeration and conditioning procedures to minimize the possibility of mold growth in storage that could lead to the further development of aflatoxin.

Mr. Chairman, the NGFA previously has testified to Congress concerning our industry's response in complying with these legal mandates and explaining our industry's actions and strategies to address aflatoxin. These comments still are relevant today, and I would like to submit a copy of that testimony, presented before the House Agriculture Committee's Subcommittee on Wheat, Soybeans, and Feed Grains on April 4, 1989, for the record.

Our Association also is active in providing information to our members regarding regulatory and statutory obligations concerning mycotoxins that affect grain-handling practices. We monitor research and new grain-handling techniques whose goal is to reduce the incidence of this naturally occurring contaminant. We maintain a close and ongoing dialogue with processors concerning aflatoxin so that our members can continue to provide the quality of grain these companies demand. And we have been an active participant in the ongoing discussions within the U.N.'s Codex Alimentarius Commission's concerning permitted levels of aflatoxin in corn in international trade.

Concerning the 1993-crop situation, our members report that it does not appear that the necessary weather conditions were present to cause an appreciable aflatoxin problem in the Corn Belt, where the vast majority of U.S. corn is produced. This assessment is similar to that made by the Multi-Crop Aflatoxin Working Group, an alliance of producers, processors and marketers of various commodities that was formed several years ago to seek scientifically based solutions to problems caused by the natural contamination of crops with aflatoxin. Mr. Chairman, we have been asked to submit a brief statement from the Multi-Crop Aflatoxin Working Group for the record.

In those scattered areas where weather conditions have led to the occurrence of aflatoxin — as well as in geographic regions where local climates make aflatoxin a more common occurrence — producers and country elevators actually begin working together to identify and quantify the extent of the problem while the corn is still on the stalk. University

agronomists and grain scientists in affected areas also conduct widespread sampling of the growing crop, as do state and federal regulatory agencies. Educational meetings for producers and grain elevator operators are conducted to provide guidance on how to detect aflatoxin; proper harvesting, drying and storage procedures; and ways to sample and screen for the presence of aflatoxin in inbound deliveries.

If weather conditions exist that signal the potential emergence of aflatoxin, country elevators perform screening tests to determine if it is present. If such testing indicates the mold is present, the grain is tested further to determine if the levels exceed FDA guidelines. In some cases, grain elevator managers have instituted routine screening of all in-bound grain regardless of growing conditions.

Furthermore, once aflatoxin is known to be present in an area, the entire marketing chain takes additional stringent quality-control measures to prevent contaminated grain from entering market channels and to direct such corn to FDA-approved uses. Processors and food companies have extensive quality-control programs in place that utilize sophisticated laboratory tests to detect the presence of aflatoxin in incoming shipments from country elevators long before products ever reach the consumer.

Export elevators, too, have instituted quality-control measures to screen inbound corn prior to unloading in response to increased awareness about the occurrence of aflatoxin and the demands of overseas customers. This has increased awareness about aflatoxin in the domestic market. For instance, one exporter originating corn from a region where aflatoxin tends to be more prevalent has instituted a policy of testing each in-bound load for aflatoxin and rejecting each load that fails the test reports that country elevators serving this export facility have implemented similar testing requirements.

Stringent contamination-prevention procedures implemented by domestic processors and export elevators — coupled with increasingly common quality-control requirements

implemented by grain elevators — are part of the multi-layered safeguards that exist within the grain handling and processing industry and affect decisions on weather-damaged grain that is purchased from farmers.

In addition, the U.S. Department of Agriculture's Federal Grain Inspection Service has issued regulations that require all grain exported from the United States that is officially inspected to be tested for the presence of aflatoxin unless the buyer and seller contractually agree to waive this requirement. In addition, FDA has established regulatory policies that govern the Food, Drug and Cosmetic Act's export provisions governing contaminants.

### Vomitoxin

The regulatory framework governing aflatoxin has been in place for many years and is well understood by our industry. But a similar certainty did not exist until very recently concerning FDA's current regulatory stance on deoxynivalenol, commonly referred to as vomitoxin.

This non-carcinogenic toxin is produced by several molds of the genus Fusarium, especially F. graminearum, which causes pink scab disease in wheat. If weather conditions develop similar to those that existed in the Midwest in the spring and summer this year, it is virtually impossible to completely avoid the presence of DON in wheat.

Since 1982, our industry has operated under a set of advisory levels issued by FDA, which expressly stated that the agency was *"not prepared to take regulatory action at these levels but do(es) believe that products at or below these levels should not present a public health hazard."*

But in early August, it became widely known in our industry that FDA was revisiting its 1982 advisory levels, given the availability of new toxicological studies concerning the

human health effects of this naturally occurring toxin and its suspected occurrence in portions of the 1993 wheat crop. It was not until FDA issued its new advisory levels on September 16, 1993 that our industry was certain as to whether the 1982 advisory levels would become more or less stringent, or whether the advisory levels would become action levels.

The distinction between action levels and advisory levels is important to our industry. Advisory levels are relied upon as indicators from FDA as to specific levels of vomitoxin that the agency believes provides a more-than-adequate margin of safety to be protective of human and animal health. But action levels denote specific levels of contamination at which the agency is prepared to take regulatory action.

I'll come back to the uncertain regulatory environment that gripped our industry in a few moments.

With a non-carcinogenic mycotoxin like vomitoxin, the grain handling industry must balance several considerations. These include the quality needs of end-users, FDA's regulatory policy and elevator managers' desires to provide a fair market for their farmer-customers.

The degree to which each of these considerations is met depends on such critically important factors as the extent of weather-damaged grain; the expected ratio of high-quality to low-quality grain, market demand for various qualities and available storage space. Elevator managers also assess prudent storage and market risks to minimize the possibility of severe financial loss. Finally, elevator managers must cope with each of these considerations and factors under the tight time constraints of early harvest pressure. And as I mentioned earlier with respect to vomitoxin, this year's situation was compounded by an uncertain regulatory environment.

Importantly, those managing grain facilities understand there are few guarantees in the marketplace. For example, several years ago, some Texas elevators received corn from farmer-customers before they realized aflatoxin contaminated many lots, making the grain unmarketable. There also have been periods when elevators storing low-test-weight wheat had no commercial buyers for extended periods of time.

Our members report that the magnitude of storage and market risks associated with the 1993 wheat crop was particularly acute. Early in the wheat harvest, elevator managers confronted considerable marketplace risks associated with the taking delivery of weather-damaged wheat in the absence of reliable information on such factors as: 1) the extent to which the crop contained vomitoxin; 2) how extensive the damage levels were likely to be; 3) the low quantities of high-quality stocks; 4) concern over market demand for weather-damaged wheat; 5) the uncertainty surrounding potential changes by FDA to its vomitoxin regulatory policy; 6) questions concerning the accuracy and repeatability of inspection tests for vomitoxin; and 7) the resultant price support policy that USDA's Agricultural Stabilization and Conservation Service would adopt with respect to weather-damaged wheat.

These uncertainties led many elevator managers to advise their farmers to hold onto their 1993 crop wheat until the situation became clearer. We are fortunate that in the most affected states — North Dakota, South Dakota and Minnesota — ample quantities of on-farm storage space allowed many farmers to exercise this option.

But some farmers, either by choice or out of necessity, did deliver new-crop wheat for sale during this period of uncertainty and the price was discounted because of the presence of scab and vomitoxin. While our organization is very careful to avoid any discussion of specific pricing strategies with its members because of anti-trust concerns, we did ask our members about the market situation they confronted and their strategies for coping with it.



Given the complexity and uncertainty of the situation this very unusual year, we believe the market reacted in a very sophisticated and prudent way. We think a few facts will help the committee understand why the market reacted as it did:

- First, millers and grain elevators report there has been a premium in the market for some time for wheat with protein exceeding 14 percent. In fact, millers and grain elevators tell us that premiums for wheat meeting the quality specifications of millers have increased over the last several months to historically high harvest-time levels. As a result, millers have tended to retain relatively low stock levels to avoid excessive inventory costs. This consideration has made millers extremely sensitive to the quality of in-bound shipments. Market signals passed on by millers are quickly relayed to raw grain handlers in the form of premiums for high-quality, high protein wheat, and discounts for lower qualities.
- Second, as I mentioned earlier, our industry was operating in a period of regulatory uncertainty for several weeks as the wheat harvest began and the first incidences of vomitoxin were reported. Until the FDA issued its new vomitoxin advisory levels on September 16, 1993, there was legitimate concern by elevators about their potential legal liability and whether there would be acceptable markets for weather-damaged wheat accepted from farmer-customers. It also should be noted that despite the agency's action, many feeders adopt quality standards more restrictive than FDA sanctions.
- Third, this regulatory and market uncertainty was compounded by the fact that stocks of milling quality wheat were extremely low. Carryover stocks of wheat prior to the 1993 harvest were at historical lows. With little wheat on hand to meet end-user requirements, elevators were very reluctant to take delivery of large quantities of weather-damaged wheat from farmers until it was clear that it would be merchantable.

- Fourth, purchase contracts from millers and exporters increasingly contain clauses that specify a maximum vomitoxin content in wheat. Many markets typically set a maximum vomitoxin level of 2 parts per million, but some have begun to specify a zero tolerance. USDA itself has set a maximum 2 p.p.m. vomitoxin level for wheat furnished for its export donation programs to foreign countries. Clearly, these quality demands of these milling and export markets are translated into the wheat purchasing specifications of country and terminal elevators from their farmer-customers.

Given the myriad factors we have just discussed, raw grain handlers — be they country or terminal elevators — took actions early in the harvest season that they believed to be prudent to protect their financial integrity. These actions ranged from initially not accepting wheat containing vomitoxin to accepting it only after adjusting its price to reflect the elevator's perceived risk in the absence of a clear market demand for such wheat.

However, as these marketplace uncertainties have gradually been cleared up, it is our understanding that the pricing spread between high-quality wheat and weather-damaged wheat has begun to ease. A key component has been FDA's clarification of its regulatory stance. Although it is unrealistic to expect wheat containing vomitoxin to be priced equal or nearly equal to uncontaminated milling-quality wheat, we believe that markets have sufficient information to properly utilize the current stocks of contaminated wheat at a price that fairly represents its value and in a way that protects the safety of our food and feed supply.

### Conclusion

In closing, the incidence of naturally occurring mycotoxins in grain is not a new problem. It has been with us for many years. And the market has developed sophisticated and proven ways to adapt to a wide array of situations.

But increased consumer demand for even greater safety in an already safe and wholesome food supply, more stringent legislative and regulatory mandates on food safety, and advanced technology that allows us to measure ever-smaller levels of contaminants are increasing the marketplace risks confronted by the original supplier of raw grains — the American farmer. These developments, coupled with instant communication and the efficiency of the pricing system, result in this risk being shifted down the marketing chain directly to the farmer with increasing rapidity. Producers are increasingly encountering the marketplace consequences not only of substandard yields, but substandard quality.

We think this should be an important consideration as Congress examines the future of the Federal Crop Insurance Program and the specifics of an economic safety net provided to producers.

Thank you for allowing us to present our views on this topic. I would be pleased to respond to any questions the committee may have.

(The prepared statements dated April 4, 1989, and NGFA Newsletters are held in the committee files.)

(Attachment follows:)



August 15, 1990

**Memorandum To: Recipients of "Sample Grain Purchase Contract" and "Sample Grain Purchase Confirmation Memorandum" ©**

**From: National Grain and Feed Association**

The enclosed "Sample Grain Purchase Contract" and "Sample Grain Purchase Confirmation Memorandum" have been developed by the National Grain and Feed Association as a service for its member companies.

These sample documents are designed to be useful to country elevators and other grain and feed companies that purchase grain from producers.

The genesis of the Sample Contract and Confirmation Memorandum was the 1988 drought. In the aftermath of the worst drought in half a century, some elevators discovered that their contracts were inadequate to protect against nondelivery of grain that had been purchased from producers through forward contracts. In other cases, elevators found their contracts did not provide adequate specificity concerning the quality of the grain to be delivered, as well as the premiums and discounts to apply. In other cases, there were no provisions in the contracts for arbitration to apply if disputes arose.

Given these experiences, the NGFA's Country Elevator Committee embarked on a major project to evaluate existing grain purchase contracts with producers. The goal -- the achievement of which is represented by the enclosed documents -- was to devise a sample contract and memorandum that grain firms could use to evaluate the adequacy of their own contractual documents.

**The Sample Contract and Confirmation Memorandum  
--How and How Not to Use--**

In this vein, it is important to stress that the "Sample Grain Purchase Contract" and "Grain Purchase Confirmation Memorandum" are not intended to be used verbatim by grain firms. Rather, they are designed to be starting points for companies to evaluate the adequacy of their existing contracts and confirmation memorandums. Carefully examine each of the provisions contained in the Sample Grain Purchase Contract and Sample Confirmation Memorandum before incorporating them into your firm's grain purchase documents.

*Most importantly, any revisions made to a company's contract or confirmation memorandum should be carefully reviewed by that company's legal counsel.*

When considering how to incorporate some of the provisions of the Sample Grain Purchase Contract or Confirmation Memorandum into a grain company's existing contracts, pick and choose from the provisions to ensure they are compatible with your company's particular producer-customer base, grain merchandising strategies and relevant state law.

For instance, the types and formats of grain purchase contracts can be as diverse and varied as the firms involved in the grain and feed business. There may be additional provisions that need to be added to address the types of contracts being offered by the grain firm -- be they flat price, delayed price, priced-later, cash-forward or a version thereof.

And, as will be discussed in more detail later, the application of state law and the Uniform Commercial Code can affect dramatically the provisions that should be included in a contract or confirmation memorandum, even to the extent of dictating which of those two documents you use.

## **Elements of a Successful Grain Purchase Contract or Confirmation Memorandum**

In reviewing existing grain contracts being used by the industry, the NGFA's Country Elevator Committee and attorneys noticed several examples of unnecessary or excessive provisions that could be excluded without affecting the application or enforceability of the contract terms.

Simply put, a fine line exists between having a grain purchase contract or confirmation memorandum that adequately addresses the pertinent points of a transaction and one that overdoes it.

Here are some criteria to use in critically examining your company's grain purchase contract or confirmation memorandum:

▲ **Are There Ways to Simplify the Contract?** Grain purchase contracts should be concise and readable, and should contain the essential terms and conditions. These include:

- 1) The complete and proper name and address of the seller. (You may also want to obtain the seller's social security number and/or federal tax identification number.)
- 2) The name and address of the buyer.
- 3) The date the contract has been entered into.

- 4) The kind, quantity and quality of grain to be delivered by the seller to the buyer, including the numerical grade and moisture, as well as the location and method by which grade, quality and quantity will be determined. **Importantly, do not reference grain from specific acreage being grown by the producer.** Courts have freed farmers from their contractual obligations in cases where the buyer has agreed to buy crops grown on designated land and the crop later is damaged or destroyed.

In addition, if the grain buyer's company is financing the farmer's inputs, make certain any financing documents -- such as security agreements and financing documents, which often contain specific references to designated land -- are completely separate from the purchase of grain from the farmer.

- 5) Premiums and discounts, if any, applicable to grain not meeting the contract grade and quality.
- 6) A provision that requires the grain delivered to be of "merchantable quality" such that it complies with applicable tolerances and regulatory limits issued by the Environmental Protection Agency and Food and Drug Administration.
- 7) The location and time period for making delivery. If alternate delivery points are specified in the contract, consider utilizing the following policy: if the alternate delivery location is for the buyer's convenience, the increased freight charges become the responsibility of the buyer. If the alternate delivery location is for the seller's convenience, the increased freight charges become the responsibility of the seller.
- 8) The purchase price to be paid for the grain.
- 9) Payment terms applicable to the contract.
- 10) Settlement provisions applicable for underdeliveries of grain.
- 11) Procedures applicable if the buyer is notified of the existence of liens on the grain to be delivered by the producer. As will be discussed later in this memorandum, make certain your purchase contract reflects the change regarding liens made by Congress when it enacted the so-called "Clear-Title Lien Law" as Section 1324 of the Food Security Act of 1985 (7 U.S. Code Section 1631).
- 12) The buyer's right to delay the delivery period. As included in the Sample Grain Purchase Contract, this provision is an alternative to -- and has several advantages over -- a "force majeure clause" as will be discussed later in this section of the memorandum.



- 13) The applicability of NGFA Trade Rules to the contract, except as otherwise expressly stated in the contract. This clause has the advantage of placing the contract with the producer on a more "commercial" basis and may be extremely helpful if a dispute arises. Importantly, if your contract includes a clause incorporating the NGFA's Trade Rules, it is advisable to make copies of the Trade Rules and Arbitration Rules available when the contract is signed. Copies of a booklet containing the NGFA Trade Rules and Arbitration Rules are available at a nominal cost from the NGFA.

Be advised that the NGFA's Trade Rules do not directly address truck deliveries of grain except in Grain Trade Rule 12(b). There may be situations where the buyer will want to include special provisions for truck deliveries in the grain purchase contract.

- 14) The applicability of the NGFA's Arbitration System as the sole means for resolving disputes that may arise under the contract. NGFA members have the right to arbitrate cases with producers and other nonmembers if the nonmember agrees to do so. Signing a contract that includes an arbitration clause represents acceptance by the producer to use arbitration as the sole remedy to resolve disputes that may arise under that contract. If the producer subsequently "balks" at arbitrating a dispute, a court may be more inclined to refer the dispute to arbitration since the signed contract includes such a clause. Most states have an arbitration statute that provides for judicial enforcement of arbitration clauses that are incorporated into contracts.

*(Special Alert to Nonmembers of NGFA: Nonmembers of the NGFA should beware of using such a reference to arbitration in their contracts because it would provide little, if any, protection in dispute settlements. Under the NGFA's Bylaws, nonmembers cannot bring arbitration cases to the NGFA unless the other party to the dispute is an NGFA member. And in such cases, NGFA has no power to compel the member to arbitrate such disputes with a nonmember.)*

If a dispute arises and is arbitrated through the NGFA, the decision is final and binding upon both parties; the decision generally cannot be appealed to a court of law. If either party refuses to abide by the decision, the other party simply can file for a "summary judgment" proceeding in court. In this proceeding, the court enforces the arbitration decision against the noncomplying party by issuing an order directing it to abide by the arbitration decision.

- 15) A reference as to which state's laws apply to the contract for matters not addressed by the NGFA's Trade Rules or Arbitration Rules. This is especially important when the grain company purchases grain from producers in more than one state.

- 16) Reference the binding nature of the contract, and amendments to it, on the parties involved and their heirs, personal representatives and successors.
- 17) A reference to the assignability of the contract.

**Importantly, have the producer/seller sign the contract as soon as possible.**

**▲ Does the Contract Need Updating?** Several grain purchase contracts currently in use contain outdated provisions. One of the most common is a requirement that the producer notify the buyer of all liens on grain being sold. Under the so-called "Clear-Title Lien Law" (Section 1324 of the Food Security Act of 1985) -- which preempted existing state law -- the obligation to provide notification of the existence of liens shifted to the creditor through the use of direct notice or through central notification systems adopted pursuant to the federal law. Thus, producers no longer are required to notify the buyer of the existence of liens; nor are buyers obligated to "search" for liens. Buyers should be alert that outdated contractual language may weaken the rights granted to them under federal law. The NGFA's Sample Grain Purchase Contract and Sample Grain Purchase Confirmation Memorandum contain up-to-date clauses that reflect current law.

**▲ Is the Contract Balanced and Fair to the Producer?** Review your existing grain purchase contract to determine if any unreasonable terms or conditions placed on the producer can be deleted while at the same time providing adequate protection to the grain buyer. Unreasonable terms may decrease the grain firm's credibility in the eyes of the producer. In fact, such contract terms may cause that producer to believe the grain firm is treating him less than fairly and actually encourage breach of the contract by the producer.

**▲ Is it Advisable to Include a Force Majeure Clause?** Numerous grain purchase contracts in use contain "force majeure clauses" that relieve the buyer of performing on the contract for various causes. Some of these force majeure clauses cited a rather expansive list of causes that would relieve the buyer from performance.

The disadvantage of including a "force majeure" clause in a grain purchase contract with producers is that if a dispute arises that involves nondelivery of grain by the producer, a court examining the contract may be inclined to allow such nonperformance if the contract itself allows similar nonperformance by the buyer for any number of reasons that are outside of the buyer's ability to control. For instance, a contract containing a force majeure clause that relieves a buyer from accepting delivery of grain from a producer because of an "act of God" may be used against the buyer if the producer is unable to deliver grain because of a similar occurrence or situation, such as drought. For this reason, the NGFA's Sample Grain Purchase Contract contains a clause that delays -- but does **not** totally relieve -- the buyer from taking delivery of grain from the producer if caused by reasons beyond the buyer's control.

## The Grain Purchase Contract or Grain Purchase Confirmation Memorandum -- Which Approach to Use --

Deciding which approach to use -- a grain purchase contract or a confirmation memorandum -- when purchasing grain from producers depends upon the state in which the firm does business and the type of customers with whom the company deals.

The reason? The Uniform Commercial Code and the definition of "merchant."

Contracts are the basic foundation upon which all commercial transactions are predicated. Confirmation memoranda are used to confirm the existence of oral contracts. But transactions in goods such as grain are affected extensively by a state's adopted version of the Uniform Commercial Code. The UCC is a body of law governing commercial transactions that is adopted and utilized by every state except Louisiana. While the intent of the UCC is to provide common terms for commercial transactions, there are important differences that exist between states of which commercial grain and feed firms need to be aware.

First, there actually are three different official texts (1962, 1972 and 1978) of the UCC. The UCC is not federal law. It was sponsored by the National Conference of Commissioners on Uniform State Laws. Thus, the UCC only becomes law when a state decides to enact it. In addition, states have added their own amendments to the official texts to serve local interests, conditions or circumstances.

Article 2 of the UCC, "Transactions in Goods," applies to grain purchases from producers. Under Section 2-105 of the UCC, "goods" include harvested crops and growing crops. Section 2-106 provides that a sale consists of the "passing of title" from the seller to a buyer for a price.

Also having an important bearing on grain transactions is the UCC's "Statute of Frauds" provision. This provision generally requires that contracts involving the sale or purchase of goods at a price of \$500 or more be in writing and be signed by the party against which enforcement of the contract terms is sought.

### The Definition of 'Merchant'

However, there are some important exceptions. Of greatest importance to grain buyers is the UCC provision that governs transactions involving merchants, which provides as follows:

*"Between merchants if within a reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know of its contents, it satisfies the requirements of*

*subsection 1 (the Statute of Frauds) against such party unless written objection to its (the confirmation memorandum's) contents is given within 10 days after it is received."* (Emphasis added)

Whether a person is a "merchant" is dependent upon how individual states apply the following definition contained in Section 2-104(1) of the UCC:

*"'Merchant' means a person who deals in goods of the kind or otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill."*

While states adopting this provision have made these definitions a part of their respective state's law, the judicial interpretations of the meaning of the term "merchant" vary. A review of court cases reported in the *UCC Case Digest* indicates the following:

**▲ States Where Producers are Considered to be Merchants:** UCC case law in the following states has found that farmers are merchants: Georgia, Indiana, Mississippi, Missouri, Nebraska, North Carolina, North Dakota and Ohio.

**▲ States Where Producers are Not Considered to be Merchants:** Conversely, UCC case law in these states has found that farmers are not merchants: Alabama, Arkansas, Kansas, New York, South Dakota, Utah and Washington. However, in two of these states -- New York and Washington -- the facts involved in a case can determine whether the producer is considered to be a merchant.

**▲ States Where Producers May or May Not be Considered to be Merchants:** UCC case law in these states has yielded mixed verdicts as to whether a producer is considered to be a merchant: Iowa, Illinois, Montana, Texas and Wisconsin. In most circumstances, courts in Texas appear to lean toward finding that the producer is a merchant.

In states where producers are considered to be "merchants," a confirmation memorandum can have the same effect as if both parties signed the contract; in these instances, the confirmation memorandum is the written evidence of the parties' agreement.

But if the farmer is **not** considered to be a "merchant," the confirmation memorandum -- unsigned by the farmer -- cannot be used as evidence of the terms of the oral agreement. Thus, the Sample Grain Purchase Confirmation Memorandum should never be used without considering all the risks and after consultation with the grain company's attorney.

## Other Factors to Consider

When it comes to the area of law that concerns the treatment of producers as merchants, it is important to emphasize these additional points:

▲ Generally, the party that benefits by defining the other party as a merchant has the burden of proving the “merchant character” of the other party;

▲ If there are factual questions or inferences to resolve about whether the other party is a merchant, it may be a jury that determines whether the party is a merchant for a particular product. If the facts are clear, the decision concerning whether the farmer is a merchant is a question of law that will be determined by the court.

▲ A person may be a merchant for some purposes but not for others.

▲ Even in states where farmers consistently have been considered to be “merchants,” future case law can change that interpretation. Relying upon the merchant status of a farmer in all circumstances can be dangerous since the occasional seller of grain, the retired farmer and the “gentleman farmer” may claim they should not be categorized as “merchants” even in those states that normally consider producers to be merchants.

▲ If parties use confirmation memoranda, they should consider sending such to producers by certified mail to ensure a record of the sending of such memoranda.

▲ Most importantly, even if a farmer is deemed to be a merchant, under the UCC he or she has **10 days after the confirmation memorandum is received to object to its contents.**

Given these considerations, even grain companies operating in states where producers generally are considered to be merchants should strongly consider utilizing written grain purchase contracts signed and executed by both parties instead of confirmation memoranda. The reason is that signed contracts make irrelevant the question of whether the farmer is or is not a merchant.

If the grain firm still opts to utilize confirmation memoranda to establish the contractual terms with producers, consider developing a master grain-trading agreement that each producer signs at the start of the merchandising year before oral telephone contracts are entered into between the grain buyer and the producer. A copy of the grain company’s confirmation memorandum that will be used for future transactions can be attached to this master agreement. The producer, by signing the “master grain-trading agreement,” thus could agree up front to the fact that he or she is a “merchant” and is bound by oral agreements upon which a confirmation memorandum is received. Importantly, however, the “10-day rule” under the UCC still would apply that allows the producer to object to each oral sale -- a rule that could be avoided by having each transaction covered by a signed contract.



## Addressing Nonperformance

So what if everything's been done right -- a written contract has been signed by the producer -- and the producer still refuses to deliver the grain during the time period specified in the contract?

In this event, the seller has "repudiated" the contract. Under Section 2-610 of the UCC, the buyer can suspend its own performance on the contract and either: 1) await performance for a reasonable time; or 2) seek reimbursement -- such as "buying in" -- for breach of contract.

If the purchase contract is subject to the NGFA's Trade Rules, examine the relevance of **Grain Trade Rule 10** -- "**Incomplete Shipment or Delivery**" -- which states:

### *Rule 10. Incomplete Shipment or Delivery.*

***Seller's Conveyance:** When the Seller finds that he will not be able to complete a contract within the agreed limit, it shall be his duty at once to advise the Buyer by telephone or telegraph, whereupon it shall be the duty of the Buyer at once to elect either to: (a) agree with the Seller upon an extension of the contract; (b) after having given notice to the Seller to complete the contract, the Buyer, by the exercise of due diligence, will buy-in for the account of the Seller, the defaulted portion of the contract; or (c) after having given notice to the Seller to complete the contract, the Buyer will cancel the defaulted portion of the contract at fair market value based on the close of the market the next business day. If the seller fails to notify the Buyer of his inability to complete his contract, as above provided, the liability of the Seller shall continue until the Buyer, by the exercise of due diligence, can determine whether the Seller has defaulted. If so, the Buyer shall immediately: (a) agree with the Seller upon an extension of the contract to cover the deficit; (b) after having given notice to the Seller to complete the contract, the Buyer, by the exercise of due diligence, will buy-in for the account of the Seller the defaulted portion of the contract; or (c) after having given notice to the Seller to complete the contract, the Buyer will cancel the defaulted portion of the contract at fair market value based on the close of the market the next business day....*

*The word "notice," as used in this rule shall mean verbal communication when possible, and in all cases by wire or other rapid written communication.*



Under this Trade Rule, the buyer has three options. Two of those options may be applicable:

▲ “Buying-in” for the account of the seller after notifying the seller to complete the contract.

▲ Canceling -- again after notifying the seller -- the defaulted portion of the contract at a fair market value based on the close of the market the next business day.

In such circumstances, the buyer can match the contract cancellation time with the marketplace at that time to determine monetary damages to assess, rather than matching a particular purchase of grain from a producer with a specific grain merchandising or hedge transaction.

There are other cases in which the producer's remarks concerning performing on the basis of the contract are more ambiguous than outright refusal to deliver the grain. In these instances, Section 2-609 of the UCC may provide some relief to the buyer. This section authorizes a party with “reasonable grounds for insecurity” to “demand adequate assurance of due performance.” If the other party (the seller) fails to provide “adequate assurance of performance” within a “reasonable time not exceeding thirty days,” such failure constitutes “repudiation of the contract.” Whether there is “reasonable grounds for insecurity” is a factual question. Again, if the contract is subject to the NGFA Trade Rules, Grain Trade Rule 10 may be applicable.

Of course, it always is advisable to consult with legal counsel when contract performance problems arise so that you don't overreact or underreact.

## Some Final Thoughts

While the contents of the enclosed NGFA Sample Grain Purchase Contract and Sample Grain Purchase Confirmation Memorandum are important, they do not replace good management practices.

First and foremost, know your seller/customer. There is no substitute for knowing the performance track record of the person(s) from whom your company is buying grain.

Second, there are times when grain firms need to be tough and firm in defense of their rights in dealing with producers. But even more frequently, there is a need to be reasonable and conciliatory, as well.

Further, being honest and straightforward in dealings with producers and others can go a long way toward discouraging damaging actions by parties who believe, rightly or wrongly, that they have been deceived or misled. Customers who believe they have been deceived or misled can be extremely potent adversaries. Often they

will demand punitive damages in addition to actual damages. And payment of punitive damages is something no business can afford.

As a manager, make certain your employees communicate freely with you about unusual and/or significant risk items that emerge during their grain purchase transactions with producers and other sellers.

Also be knowledgeable about the legal requirements of your business. Perhaps it is advisable to conduct periodic seminars and/or meetings with employees to be certain they are aware and apprised of issues pertaining to their areas of responsibility.

Finally, and most importantly, it is essential to confirm contractual dealings with a written, signed document as soon as possible after the transaction is entered into.

## Conclusion

The enclosed Sample Grain Purchase Contract and Sample Grain Purchase Confirmation Memorandum represent a good checklist and starting point for a company to use to evaluate its existing contractual documents. Importantly, some state laws may require more detail and different provisions. **That's why it is extremely important to contact your company's attorney before revising contractual documents.**

The applicability of the NGFA's Trade Rules and Arbitration System to the purchase contract also are business and legal decisions. The goal, however, should be to provide certainty in the contractual rules and a fair, cost-effective system to resolve disputes that may arise.

## Credits

### ***Authors:***

**Randall C. Gordon**, vice president, communications and government relations, National Grain and Feed Association, Washington, D.C.

**David C. Barrett Jr., Esq.**, counsel for public affairs, National Grain and Feed Association, Washington, D.C.

### ***Legal Review:***

**David C. Barrett Jr., Esq.**, counsel for public affairs, National Grain and Feed Association, Washington, D.C.

**Marc L. Fleischaker, Esq.**, NGFA legal counsel; partner, Arent, Fox, Kintner, Plotkin and Kahn, Washington, D.C.

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## Appreciation

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▲ **Donald C. Slachta**, chairman; president, Agri Sales Inc., Saginaw, Mich.

▲ **Charles O. Buirge**, vice president, Peavey Grain Companies, Minneapolis, Minn.

▲ **Thomas Feldmann**, marketing manager, West Central Cooperative, Ralston, Iowa.

▲ **Mark Huston**, vice president, marketing, Arizona Grain Inc., Casa Grande, Ariz.

▲ **Gary C. Martin**, president, Ostrom-Martin Inc., Princeville, Ill.

▲ **William Sauder**, grain merchandising and storage manager, Evans Grain Co., Salina, Kan.

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### Disclaimer

The National Grain and Feed Association makes no warranties, expressed or implied, concerning the application or use of the information contained in the Sample Grain Purchase Contract or Sample Grain Purchase Confirmation Memorandum. This memorandum, as well as the Sample Grain Purchase Contract and "Sample Grain Purchase Confirmation Memorandum" are not intended to be used verbatim, but only as guidelines for evaluating the adequacy of existing contractual documents. Recipients should consult their respective legal counsel when using or adapting all or portions of the Sample Grain Purchase Contract and Sample Grain Purchase Confirmation Memorandum to their individual grain merchandising operations.

[NGFA No. 1 (Aug. 1990)]

Contract No. \_\_\_\_\_

**Sample Grain Purchase Contract**This is an agreement that the Seller \_\_\_\_\_  
(Seller's Name)of \_\_\_\_\_  
(Address, City, State, Zip)on \_\_\_\_\_ has sold and agreed to deliver to the buyer \_\_\_\_\_  
(Date) (Company Name)at \_\_\_\_\_  
(Address, City, State, Zip)a net quantity of \_\_\_\_\_ (bu., cwt.) of U.S. \_\_\_\_\_ of \_\_\_\_\_ at \_\_\_\_\_  
(Circle One) (Grade and Kind) (Commodity) (% Moisture)at \_\_\_\_\_ for delivery \_\_\_\_\_  
(Delivery Location) (Specify Time Period for Delivery)at the purchase price of \$ \_\_\_\_\_ per (bu., cwt.) under the following terms and conditions:  
(Circle One)**Terms and Conditions**

**Grade and Quality Specifications:** The quality of grain delivered under this contract shall be determined at the place and time of delivery. **Buyer's weights and grades to govern.** All deliveries made under this contract shall be of the grade and quality specified herein. Buyer reserves the right to reject individual shipments not complying with this provision. Refusal by the buyer to accept delivery of grain for this reason shall not release the seller from this contract.

**Merchantable Quality:** All grain delivered under this contract shall be of merchantable quality, unadulterated, and unrestricted from movement in interstate commerce within the meaning of the federal Food, Drug and Cosmetics Act, Environmental Protection Agency tolerances, the U.S. Grain Standards Act and applicable state law.

**Lien:** If any security interests in the grain arise and are made known to the buyer through notification prior to delivery of the grain, acceptance of the grain in fulfillment of this contract shall be at the option of the buyer. Any lien notification(s) received by the buyer prior to delivery of, or payment for, the grain may be honored by the buyer.

**Premiums and Discounts to Apply:** Acceptance of deliveries not meeting the contract grade and quality shall be at the option of the buyer. If the buyer elects to accept such deliveries not meeting the contract grade and quality, market scale discounts and premiums at time of delivery will apply, unless otherwise specified in writing.

The following premiums and discounts will apply to grain delivered pursuant to this contract:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Over)

**Settlement for Underdeliveries:** All deliveries made under this contract shall be for the quantity specified herein. If the seller finds he will not be able to complete delivery of the contracted quantity, it shall be the duty of the seller to advise the buyer at once. The buyer, when so notified, shall by the close of the next market day elect either to: a) agree with the seller upon an extension of the time for delivery; or b) after having given notice to the seller to complete the contract, the buyer, by the exercise of due diligence, will buy-in for the account of the seller the defaulted portion of the contract; or c) after having given notice to the seller to complete the contract, the buyer will cancel the defaulted portion of the contract at the difference between the contract price and the replacement cost based on the close of the market the next business day when trades can be made.

If the seller fails to notify the buyer of his inability to complete the contracted delivery as specified previously, the liability of the seller shall continue until the buyer, by the exercise of due diligence, can determine whether the seller has defaulted. If such default is determined by the buyer, the buyer shall immediately: a) agree with the seller upon an extension of the time for delivery to cover the default; or b) after having given notice to the seller to complete the contract, the buyer, by the exercise of due diligence, will buy in for the account of the seller the defaulted portion of the contract; or c) after having given notice to the seller to complete the contract, the buyer will cancel the defaulted portion of the contract at the difference between the contract price and the replacement cost based on the close of the market the next market day when trades can be made.

**Delivery Location and Method:** All deliveries made pursuant to this contract shall be at the location appearing in the contract.

**Payment Terms Applicable to this Contract:** Payment will be made as follows: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Buyer's Right to Delay Delivery Period.** The Buyer has the right, without penalty, to delay the time for accepting delivery and making payment under this contract if such delay is caused by government regulation or action, labor strikes, riots, insurrection, freight embargoes or transportation delays. It shall be the duty of the buyer to accept delivery and make payment under this contract as soon as practicable after the cause for delay has ceased.

**NGFA Trade Rules to Apply:** Except as otherwise expressly provided herein, this contract shall be subject to the National Grain and Feed Association's Trade Rules applicable on the date this purchase contract is signed. *(NGFA Trade Rules and Arbitration Rules are available upon request.)*

**Arbitration:** The parties to this contract agree that the sole remedy for resolution of any and all disagreements or disputes arising under this contract shall be through arbitration proceedings before the National Grain and Feed Association (NGFA) under NGFA Arbitration Rules. The decision and award determined through such arbitration shall be final and binding upon the buyer and seller. Judgment upon the arbitration award may be entered and enforced in any Court having jurisdiction thereof.

**Applicable Law:** This contract shall be governed by, and construed in accordance with, the laws of the State of \_\_\_\_\_ If a matter not addressed by the NGFA's Trade Rules or the Arbitration Rules is at issue.

**Final and Complete Agreement:** This contract shall represent the final, complete and exclusive statement of agreement between the parties and may not be modified, supplemented or waived, except in writing signed by both parties.

This contract, and any amendments thereto agreed to mutually by the seller and buyer, shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives and successors of the respective parties. This contract may be assigned, but no assignment shall relieve the buyer and seller from fulfilling their obligations.

In witness whereof, the parties have set their hands this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.

Seller:

\_\_\_\_\_  
[Authorized Signature(s)]

Buyer:

\_\_\_\_\_  
[Authorized Signature(s)]



Contract No. \_\_\_\_\_

[NGFA No. 2 (Aug. 1990)]

**Sample Grain Purchase Confirmation Memorandum**Bought From: \_\_\_\_\_ on \_\_\_\_\_  
(Seller's Name(s)) (Date)

(Address, City, State, Zip)

NET BUSHELS	COMMODITY	GRADE FACTORS	PRICE	SHIPPING PERIOD	PLACE OF DELIVERY

This contract was made at \_\_\_\_\_ at \_\_\_\_\_  
(time) (place)elevator office, by \_\_\_\_\_  
(Seller or Agent) (Buyer's Representative)**Previously Agreed Upon Terms and Conditions**

The statements above and below are understood to be an accurate statement of the terms and conditions of the agreement between the parties hereto. Failure to advise us immediately of any discrepancies, objections to or disagreement with such terms and conditions shall be construed as acceptance of these terms.

1. — Grade and quality premiums and discounts to be established at time of delivery by the buyer.
2. — Buyer's weights and grades to govern.
3. — The MINIMUM damage chargeable to the seller, in the case of failure to fulfill this contract, will be the difference between the contract price and the fair market value at the time of cancellation.
4. — All grain delivered under this contract shall be of merchantable quality, unadulterated and unrestricted from movement in interstate commerce within the meaning of the federal Food, Drug and Cosmetics Act, Environmental Protection Agency tolerances, the U.S. Grain Standards Act and applicable state law.
5. — If any security interests in the grain arise and are made known to the buyer through notification prior to the delivery of the grain, acceptance of the grain in fulfillment of this contract shall be at the option of the buyer. Any lien notification received by the buyer prior to delivery of, or payment for, the grain may be honored by the buyer.
6. — The buyer has the right, without penalty, to delay the time for accepting delivery and making payment under this contract if such delay is caused by government regulation or action, labor strikes, riots, insurrection, freight embargoes or transportation delays. It shall be the duty of the buyer to accept delivery and make payment under this contract as soon as practicable after the cause for delay has ceased.
7. — Any extension of the delivery time is to be at the buyer's option.
8. — Except as otherwise provided herein, this contract shall be subject to the Trade Rules of the National Grain and Feed Association (NGFA), which are incorporated herein. (A copy of the NGFA Trade Rules and Arbitration Rules is available upon request.)
9. — The sole remedy for resolution of any and all disagreements or disputes arising under this contract shall be through arbitration proceedings before the NGFA under the NGFA's Arbitration Rules. The decision and award determined through such arbitration shall be final and binding upon the buyer and seller. Judgment upon an arbitration award may be entered and enforced in any Court having jurisdiction thereof.
10. — This contract shall be governed by, and construed in accordance with the laws of the State of \_\_\_\_\_. If a matter not addressed by the NGFA's Trade Rules or the Arbitration Rules is at issue.
11. — It is agreed that the contract shall be binding on the heirs, personal representatives, successors and assignees of the parties hereto.

We confirm purchase from you as noted above: \_\_\_\_\_  
(Company Name)

By: \_\_\_\_\_

Seller should retain this copy

**Statement of**  
**John Campbell**  
**Representing the**  
**National Grain Trade Council**  
  
**before the**  
**Subcommittee on General Farm Commodities**  
**Committee on Agriculture**  
**U.S. House of Representatives**  
  
**on**  
**1993 Crop Quality Issues**

**September 28, 1993**

Mr. Chairman and Members of the Subcommittee:

The National Grain Trade Council appreciates this opportunity to address the Subcommittee's concern about 1993 crop quality issues. I am John Campbell, assistant vice president for Corporate Affairs, Ag Processing, Inc., which is headquartered in Omaha, Nebraska. Ag Processing is a farmer-owned cooperative involved in soybean processing, bulk grain merchandising, and feed manufacturing. I am a member of the Farm Policy Committee of the National Grain Trade Council, on whose behalf I appear before you today.

The Council is a national trade association whose regular members include grain exchanges, boards of trade, and national grain marketing organizations. The Council has a number of associate members representing a large cross-section of the grain marketing industry.

Council members cover the full spectrum of the agricultural industry. Our members include firms who handle bulk grains and oilseeds, the markets where the price risk associated with merchandising grain is hedged, transportation firms, and companies that process agricultural products into consumer-ready items we purchase on the grocery shelf.

We hope today's hearing will help moderate some of the highly inflammatory rhetoric that has surrounded the market's reaction to vomitoxin-contaminated wheat. Our testimony will outline the purpose and function of the grain marketing system. We will discuss how the marketing system copes with differences in quality and how the industry interacts with its customers -- farmers and end-users -- through the marketplace. Our testimony will show that, contrary to popular belief, the market is paying premiums for vomitoxin-contaminated wheat and abnormally high premiums for higher quality wheat.

#### **Grain Merchandising System Adds Value**

As a premise to our discussion, it might be helpful to remember why the grain merchandising system was built in this country. Only a few generations ago farmers used most of their grain production on the farm. Corn, oats, barley, and even wheat were produced primarily for live-stock and family consumption. As machinery and chemical power began to replace horsepower, and as production began to exceed on-farm family needs, farmers moved from self-sufficiency to marketing grain to the outside world. As a result, small grain storage operations began to spring up. Some of these were private operations, but many were built by farmers in the form of local cooperative associations.

If you travel in states like Iowa, you will see tall storage facilities dotting the countryside. Rail access was critical, but so was distance from the farm. Many of these facilities are spaced about 12 miles from each other. In those days, a facility would draw grain from about a six-mile distance because the 12-mile round trip from the farm to the elevator and back was about all a wagon and team could do in a day.

Even though times have changed dramatically from the early part of this century, the purpose for building those facilities has not. The primary function of the grain elevator -- then and now -- is value enhancement. An elevator adds value through collective marketing (including storage), enhanced transportation leverage, volume clout with end-users, and quality management. Quality management is the merchandising function that is the focus of today's hearing.

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### Quality Management

When the grain industry "manages" quality it does so with a given set of constraints. The first constraint is what comes to the elevator from the farm. What goes out of the elevator can never be better than what, on average, comes into the elevator. Quality can be worse because grain, unlike wine, does not get better with age. The final constraint is meeting the quality specifications of the buyer, whether a processor or export customer.

Quality is a function of subjective and objective standards either set by the industry, the Federal Grain Inspection Service (FGIS), or the end-user through specific criteria. In some cases, such as vomitoxin and aflatoxin, the Food and Drug Administration or other government agencies will get involved. Normally, the industry runs along smoothly with respect to quality. Producers, handlers, processors and end-users all know the rules and dispute resolution mechanisms are available.

### Vomitoxin and the 1993 Wheat Crop

The industry was caught off-guard by vomitoxin this year because of the unusual occurrence of the toxin and its widespread nature in Northern wheat areas. One of the things that distinguishes the current wheat vomitoxin concerns from the 1988 corn aflatoxin scare is the nature of the toxin and end-uses for the commodity contaminated. Aflatoxin is a carcinogen, but corn is used almost exclusively for animal feed. Vomitoxin is not a carcinogen, but wheat is primarily a human (versus animal) food.

As a result of the human food concern, the FDA and end-user specifications are critical to setting values in the marketing chain.

As wheat harvest began in the North, grain purchasers were caught in a quandary for several reasons. First, the most recent FDA pronouncement on vomitoxin was over a decade old. As a result, FDA indicated it was going to review the 1982 guidelines. Until that review was completed, no one really knew what the rules were going to be. As you all know, harvest does not wait for agency reviews.

The second quandary for a grain merchant was, if you were purchasing grain under the assumption that the old FDA rules were going to stand, you still did not know which field testing method was going to suffice and the repeatability of the available tests did not satisfy some users.

In the case of AGP, we seriously considered closing our doors until we had some definite answers from FDA. In the end, we decided to purchase vomitoxin-contaminated wheat and take the risk that the wheat ultimately would be marketable. Most other companies made the same decision, but not all companies did.

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As companies considered whether to keep their doors open, each had to decide about the relative value of vomitoxin-free wheat compared to various levels of vomitoxin-contaminated wheat in the absence of a final decision from FDA on permissible vomitoxin limits. Most grain merchants offered significant premiums for vomitoxin-free wheat and lower or no premiums for vomitoxin-contaminated wheat.

Premiums and discounts based on quality are not a subjective exercise in the grain marketing business. Positioned between producers and end-users, local grain elevators must post their bids based on bids from end-users. As long as some end-user was willing to post a bid for vomitoxin-contaminated wheat it gave a basis for the local grain elevator to post a bid to the farmer.

Some have accused the grain industry of gouging farmers who wanted to sell vomitoxin-contaminated grain. In a business marked by sharp competition, such an accusation has no basis in reality. North Dakota is a good example. In 1991, there were 300 firms operating at over 500 locations. The largest firm has 30 locations. There were 222 single-station firms. This kind of competition simply does not allow for profiteering. Wheat growers will sell to the buyer with the smallest discount. A grain buyer with a discount over the prevailing market level will not be able to buy much wheat.

Until two weeks ago, the industry was up in the air with respect to the FDA stance on vomitoxin. Please understand that we are not being critical of the FDA, but we hope this Subcommittee understands the critical nature of FDA decisions. While the issue was under review by FDA, no purchaser knew for sure if the grain they were purchasing was going to be worth one penny. When a purchaser takes a risk like that he must demand a risk premium.

The situation has become more orderly since the new FDA guidelines were published. End-users are now better able to make decisions basis the new FDA guidelines. AGP's feed company, for example, made the decision to purchase no wheat mids over 5 parts per million of vomitoxin. This translates to around 1 ppm in whole wheat. Other users are making similar decisions.

### **The Market and Vomitoxin**

While there have been discounts for vomitoxin-contaminated wheat, the market is also paying historically high premiums for wheat with low amounts of vomitoxin. As the attached charts indicate, milling quality wheat with 2 ppm or less of vomitoxin is commanding an incredibly high price. In fact, you have to go back more than a decade to find similar premiums.

The flip side is that many producers do not have wheat with less than 2 ppm of vomitoxin, so the current high premiums are irrelevant to them.

Many farmers ended up with a broad array of quality problems, including low test weights, poor falling numbers, damaged kernels, and scab (which is a precursor to vomitoxin and counted as damage). All of these quality components help determine the actual price paid to the farmer --

not just vomitoxin content. Again, looking at the Duluth/Minneapolis market last Thursday and a host of quality indicators, including 5 ppm vomitoxin, an average producer could expect to receive 15 to 65 cents per bushel over the December futures close of \$3.27 per bushel, less a distance and elevation charge of around 50 cents per bushel. The farm price in this example runs from \$2.97 to \$3.42 per bushel.

This price is higher than the last five-year average for August and annual average prices for North Dakota spring wheat, which was \$3.07 in both cases. The prices are also consistent with the last five-year average for August (\$3.07) and annual average price (\$3.26) for Minnesota spring wheat.

The point of all this is that wheat with 5 ppm vomitoxin is selling for what vomitoxin-free wheat has sold for in the past.

### Conclusion

The fact is that no individual sector of the agricultural industry benefits by having a grain quality problem. We are all worse off. In the case of grain merchandising businesses, our job is to cope with and moderate the quality problems as best we can. We do not operate in a vacuum. End-users, competition, and regulators dictate the marketing conditions under which we operate.

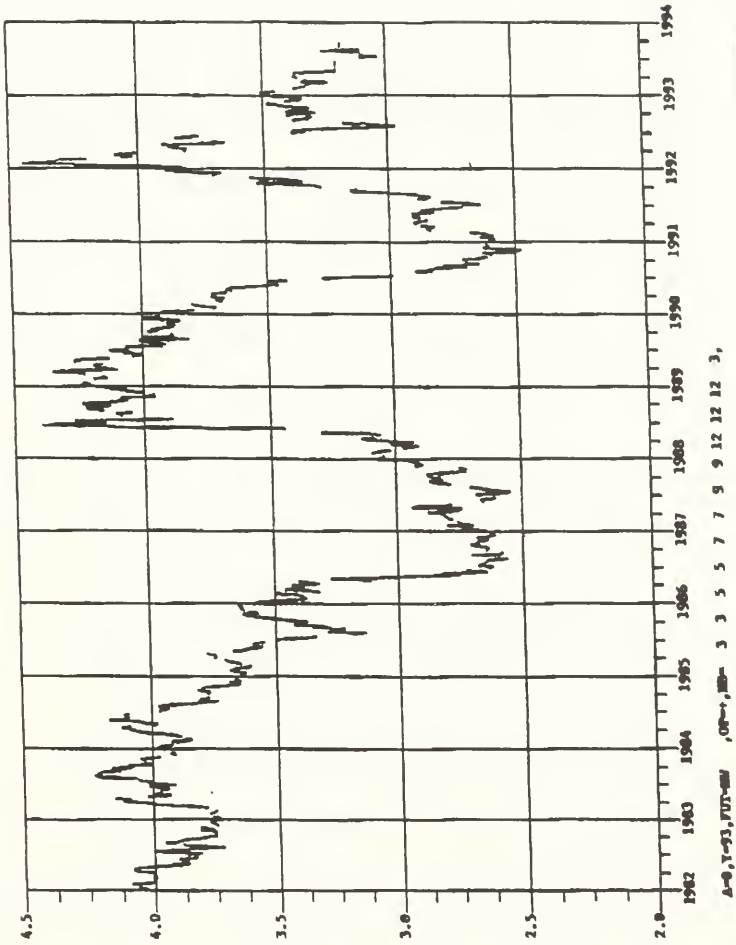
The United States has the most efficient and modern grain handling, transportation, and marketing system in the world. We hope our testimony has helped to explain how the marketing system copes with differences in quality and how the industry interacts with its customers through the marketplace.



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## MINNEAPOLIS WHEAT HARDY FUTURES



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## BUSHELS/DOLLS WHEAT WHEAT FUTURES

		1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	1992	1993
JAN	MAR												
1		4,105	3,708	3,945	3,645	3,585	2,637	3,067	4,205	3,912	2,583	3,673	3,435
2		4,058	3,752	3,975	3,685	3,585	2,650	3,065	4,207	3,922	2,595	3,695	3,495
3		4,033	3,738	3,947	3,665	3,482	2,692	3,040	4,205	3,982	2,575	3,988	3,510
4		4,048	3,769	3,920	3,625	3,423	3,732	3,045	4,233	3,790	2,580	4,240	3,481
5		-	-	-	3,677	3,382	2,722	-	-	-	-	4,248	-
FEB	MAR												
1		4,070	3,780	3,922	3,685	3,373	2,785	3,093	4,190	3,705	2,580	4,442	3,373
2		4,090	3,765	3,855	3,657	3,385	2,688	3,067	4,190	3,762	2,623	4,325	3,370
3		4,025	3,760	3,863	3,636	3,387	2,690	3,050	4,140	3,787	2,613	4,305	3,352
4		4,010	3,750	3,868	3,597	3,500	2,752	3,015	4,152	3,803	2,635	4,202	3,322
5		-	-	-	-	-	-	-	-	-	-	-	-
MAR	MAY												
1		4,010	3,787	3,882	3,643	3,320	2,775	2,962	4,228	3,680	2,630	4,060	3,322
2		4,010	3,820	3,925	3,645	3,365	2,790	2,993	4,285	3,680	2,630	4,020	3,332
3		4,010	3,892	4,018	3,680	3,655	2,792	2,958	4,275	3,678	2,685	4,087	3,340
4		3,998	3,892	4,033	3,703	3,390	2,808	2,933	4,265	3,705	2,673	4,010	3,315
5		-	4,007	4,065	-	-	-	-	4,303	3,675	-	-	-
APR	MAY												
1		4,007	4,118	4,065	3,745	3,428	2,895	3,000	4,328	3,725	2,693	3,810	3,355
2		4,007	4,095	4,095	3,740	3,368	2,870	3,095	4,380	3,708	2,687	3,832	3,370
3		4,007	4,085	4,118	3,740	3,320	2,795	3,127	4,385	3,708	2,687	3,808	3,365
4		4,080	4,085	4,082	3,773	3,400	2,710	3,080	4,385	3,662	2,641	3,872	3,345
5		4,082	-	-	-	-	2,775	-	-	-	-	3,835	3,345
MAY	JULY												
1		3,970	4,020	3,977	3,643	3,110	2,895	3,055	4,262	3,643	2,673	3,902	3,302
2		3,995	4,022	4,022	3,672	3,270	2,912	3,105	4,287	3,665	2,695	3,922	3,302
3		3,995	4,022	4,022	3,672	3,270	2,782	3,282	4,285	3,665	2,695	3,922	3,302
4		3,995	4,022	4,022	3,672	3,270	2,782	3,282	4,285	3,665	2,695	3,922	3,302
5		3,995	4,022	4,022	3,672	3,270	2,782	3,282	4,285	3,665	2,695	3,922	3,302
JUN	JULY												
1		3,968	3,972	4,089	3,567	2,890	2,650	2,438	4,035	3,450	2,650	3,822	3,202
2		3,905	3,940	4,087	3,585	2,773	2,660	2,468	4,082	3,468	2,668	3,822	3,202
3		3,955	3,960	4,108	3,585	2,642	2,652	2,468	4,082	3,468	2,668	3,822	3,202
4		3,933	3,933	4,085	3,582	2,728	2,698	2,468	4,082	3,468	2,668	3,822	3,202
5		-	4,013	-	-	-	-	4,288	4,113	-	-	-	-

NOV, Y=93, FUT=94, OP=95, MB= 3 3 5 5 7 7 9 12 12 12 3,

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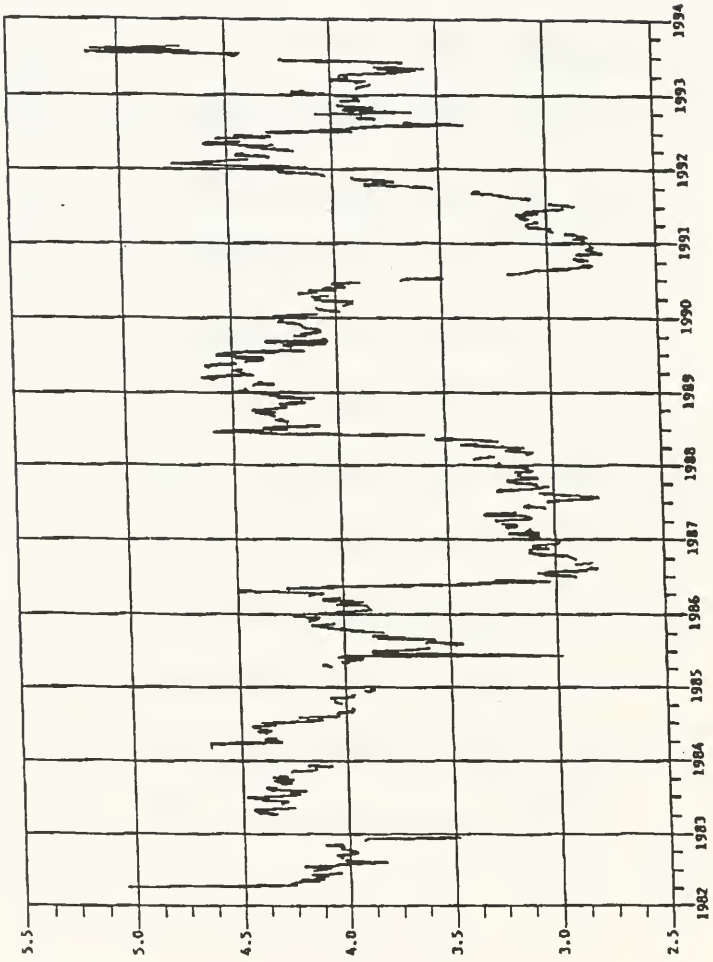
HYDROLOGICAL OBSERVATIONS: FLOW (CFS)													24-Hour 73		11.1	
		1992	1993	1994	1995	1997	1998	1999	1990	1991	1992	1993				
TOTAL	SWP															
1		3,073	3,910	3,968	3,438	2,652	4,150	4,110	3,275	2,697	3,285	3,162				
2		3,013	3,968	3,452	3,452	2,618	4,270	4,058	3,115	2,630	3,378	3,182				
3		3,905	3,063	3,355	3,400	2,600	4,110	4,083	3,983	2,680	3,200	3,023				
4		3,398	3,933	3,335	3,255	2,555	3,807	3,935	2,990	2,785	3,207	3,102				
5		3,880			2,440	2,545						3,170				
SWP																
1		3,053	3,060	3,972	3,192	2,640	4,000	3,932	2,433	3,037	2,965	3,182				
2		3,728	4,120	3,910	3,135	2,670	4,007	3,989	2,909	2,947	2,995	3,182				
3		3,855	4,220	3,850	3,395	2,702	4,106	4,017	2,819	2,830	3,102	3,335				
4		3,881	4,197	3,795	3,330	2,698	4,050	4,020	2,810	2,845	3,333	3,102				
5			3,730					3,820	2,688	2,990						
SWP																
1		3,958	4,715	3,810	3,365	2,697	4,150	3,993	2,762	3,032	3,275	3,180				
2		3,912	4,715	3,803	3,497	2,750	4,213	3,960	2,715	3,135	3,231	3,180				
3		3,987	4,125	3,773	3,313	2,870	4,280	3,880	2,643	3,153	3,273	3,100				
4		3,873	4,570	3,713	3,251	2,910	4,220	3,895	2,690	3,123	3,280	3,100				
5		3,800	4,017				4,130									
SWP																
1		3,810	4,090	3,775	3,370	2,640	4,212	3,915	2,700	3,270	3,398					
2		3,773	4,093	3,775	3,405	2,630	4,280	3,940	2,657	3,395	3,285					
3		3,752	4,040	3,865	3,400	2,645	4,280	3,945	2,635	3,377	3,405					
4		3,757	4,090	3,865	3,407	2,645	4,280	3,945	2,635	3,390	3,285					
5					3,365	2,783				3,090	3,237					
SWP																
1		3,755	4,027	3,800	3,405	2,615	4,097	3,882	2,590	3,282	3,310					
2		3,815	4,027	3,775	3,430	2,730	4,077	3,910	2,585	3,435	3,433					
3		3,815	4,027	3,713	3,570	2,660	3,955	3,977	2,585	3,512	3,417					
4		3,815	4,027	3,713	3,570	2,660	3,955	3,977	2,585	3,512	3,417					
5		3,815	4,027	3,713	3,570	2,660	3,955	3,977	2,585	3,512	3,417					
SWP																
1		3,765	3,907	3,688	3,425	2,643	4,005	3,940	2,670	3,705	3,467					
2		3,768	3,928	3,645	3,430	2,643	4,070	3,992	2,607	3,433	3,467					
3		3,762	3,910	3,637	3,400	2,605	4,043	3,989	2,600	3,433	3,330					
4		3,762	3,910	3,637	3,440	2,625	4,123	3,933	2,613	3,488	3,352					
5																

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DILUTED WHEATY DMSI 14X



$A=0, T=93, CSH=MTDB, OP=+$

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DAILYFTS INQZAT DMSL 144

	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993
JAN												
1	-	-	-	-	4.135	2.977	3.266	4.485	4.743	2.833	4.262	3.955
2	-	-	-	-	4.103	3.050	3.485	4.482	4.588	2.835	4.125	4.045
3	-	-	-	-	3.963	3.093	3.485	4.425	4.127	2.845	4.277	4.385
4	-	-	-	-	3.903	3.133	3.745	4.442	4.040	2.845	4.598	4.318
5	-	-	-	-	3.063	3.072	-	-	-	-	4.577	-
FEB												
1	-	-	-	-	3.673	3.205	3.343	4.400	3.888	2.830	4.252	3.875
2	-	-	-	-	3.885	3.047	3.347	4.380	4.077	2.852	4.565	3.970
3	-	-	-	-	3.887	3.327	3.220	4.380	4.077	2.852	4.485	3.852
4	-	-	-	-	4.030	3.302	3.245	4.373	4.092	2.910	4.397	3.808
5	-	-	-	-	-	-	-	-	-	-	-	-
MAR												
1	-	-	4.645	-	3.810	3.232	3.115	4.600	3.260	2.945	4.295	3.873
2	-	-	4.645	-	3.985	3.170	3.095	4.565	3.218	2.982	4.325	3.833
3	-	-	4.645	-	4.095	3.173	3.157	4.535	3.210	2.975	4.452	4.000
4	-	-	4.645	-	4.010	3.230	3.113	4.595	3.420	3.083	4.420	3.945
5	-	-	4.645	-	-	-	-	-	4.035	-	-	-
APR												
1	5.022	-	4.305	4.045	4.158	3.255	5.170	4.452	4.095	3.093	4.180	3.955
2	5.043	4.340	4.385	4.065	4.147	3.230	3.295	4.460	4.047	3.085	4.248	3.945
3	4.240	4.285	4.385	4.067	4.090	3.135	3.417	4.485	4.017	3.032	4.280	3.910
4	4.250	4.430	4.232	4.262	4.088	3.100	3.340	4.485	4.033	3.053	4.397	3.788
5	4.289	-	-	-	-	3.135	-	-	-	-	4.230	3.595
MAY												
1	4.233	4.450	-	3.985	4.217	3.320	3.245	4.605	4.125	3.075	4.493	3.773
2	4.145	4.250	-	3.985	4.265	3.313	3.355	4.633	4.085	3.075	4.403	3.558
3	4.230	-	4.217	3.963	4.145	3.173	3.542	4.580	3.988	3.080	4.587	3.787
4	4.123	4.285	-	3.915	3.995	3.175	3.407	4.473	3.988	3.135	4.430	3.683
5	-	-	4.153	3.972	3.345	-	-	-	4.053	3.030	-	-
JUN												
1	4.108	4.313	4.408	4.027	3.400	3.030	3.593	4.435	3.950	3.065	4.448	3.652
2	4.145	4.280	4.408	3.985	3.400	3.040	4.370	4.342	3.998	3.095	4.348	3.680
3	4.135	4.340	4.447	3.975	3.400	3.132	4.300	4.478	4.015	3.088	4.385	4.157
4	4.038	4.415	4.233	3.862	3.380	3.110	4.582	4.348	3.888	2.910	4.460	4.240
5	-	4.375	-	-	-	-	4.488	4.312	-	-	-	-

A=0,T=93,CSE=WTDU OP=.

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		EXPLORER WHEAT DRYL 144										26-SEP-93 11:21	
		1992	1993	1994	1995	1996	1997	1998	1999	1990	1991	1992	1993
JULY	1	6.175	4.478	4.402	3.868	2.900	3.023	4.240	4.373	3.490	2.875	4.305	4.440
	2	6.092	4.337	4.220	3.702	2.938	3.028	4.260	4.363	3.465	2.870	3.900	4.078
	3	4.135	4.278	4.262	3.625	3.045	2.950	4.200	4.280	3.402	2.940	4.055	4.028
	4	4.217	4.277	4.133	3.595	3.023	2.795	4.097	4.150	3.515	2.985	3.947	5.048
	5	4.080	-	-	-	3.077	2.795	-	0.150	-	-	3.895	5.137
AUG	1	4.038	4.200	4.273	3.472	2.860	2.795	4.240	4.232	3.183	3.075	3.715	4.660
	2	3.827	4.184	4.050	3.435	2.855	2.840	4.238	4.218	3.123	3.065	3.570	5.115
	3	3.895	4.187	4.030	3.615	3.005	3.023	4.298	4.252	3.108	3.055	3.527	4.355
	4	4.015	4.337	4.045	3.567	2.840	3.010	4.240	4.235	3.045	3.115	3.457	4.705
	5	4.015	-	4.027	3.547	-	-	-	4.050	2.912	3.200	-	-
SEPT	1	4.040	-	3.945	3.840	3.802	3.740	4.305	4.135	2.802	3.252	3.790	5.300
	2	4.030	4.313	3.943	3.713	2.900	3.063	4.300	4.340	2.920	3.395	3.787	-
	3	4.050	4.265	3.963	3.713	2.870	3.072	4.348	4.080	2.792	3.322	3.787	-
	4	4.040	4.248	3.972	3.643	2.827	2.920	4.380	4.045	2.880	3.290	3.850	-
	5	3.980	4.257	-	-	-	-	4.380	-	-	-	-	-
OCT	1	3.460	4.780	-	3.910	2.900	3.070	4.382	4.200	2.852	3.520	4.072	-
	2	3.972	4.753	4.017	3.895	2.935	3.110	4.408	4.140	2.804	3.563	3.628	-
	3	3.982	4.280	4.035	3.800	2.945	3.102	4.310	4.145	2.875	3.702	3.820	-
	4	4.038	4.328	4.055	3.872	3.042	3.183	4.235	4.072	2.868	3.850	3.870	-
	5	-	-	-	4.038	3.092	3.102	-	-	-	3.805	3.827	-
NOV	1	4.025	4.247	4.070	4.125	3.115	3.047	4.257	4.072	2.440	3.702	3.795	-
	2	4.113	4.240	4.075	4.150	3.113	3.140	4.257	4.090	2.465	3.760	3.958	-
	3	4.013	4.148	3.963	4.030	3.100	3.145	4.155	4.152	2.745	3.852	3.948	-
	4	-	6.147	3.968	4.043	3.075	3.185	4.170	4.152	2.778	3.910	-	-
	5	-	-	3.355	-	-	-	-	4.160	-	-	-	-
DEC	1	3.528	4.063	-	4.165	3.100	3.170	4.310	4.200	3.520	4.035	3.952	-
	2	3.807	4.180	3.885	4.120	3.075	3.000	4.285	4.200	2.798	4.022	3.857	-
	3	3.475	-	3.807	4.110	2.985	3.125	4.245	4.220	2.765	4.137	3.887	-
	4	-	-	3.860	4.238	2.975	3.145	4.313	4.248	2.803	4.255	3.887	-
	5	-	-	-	-	-	3.107	4.168	-	-	-	3.057	-

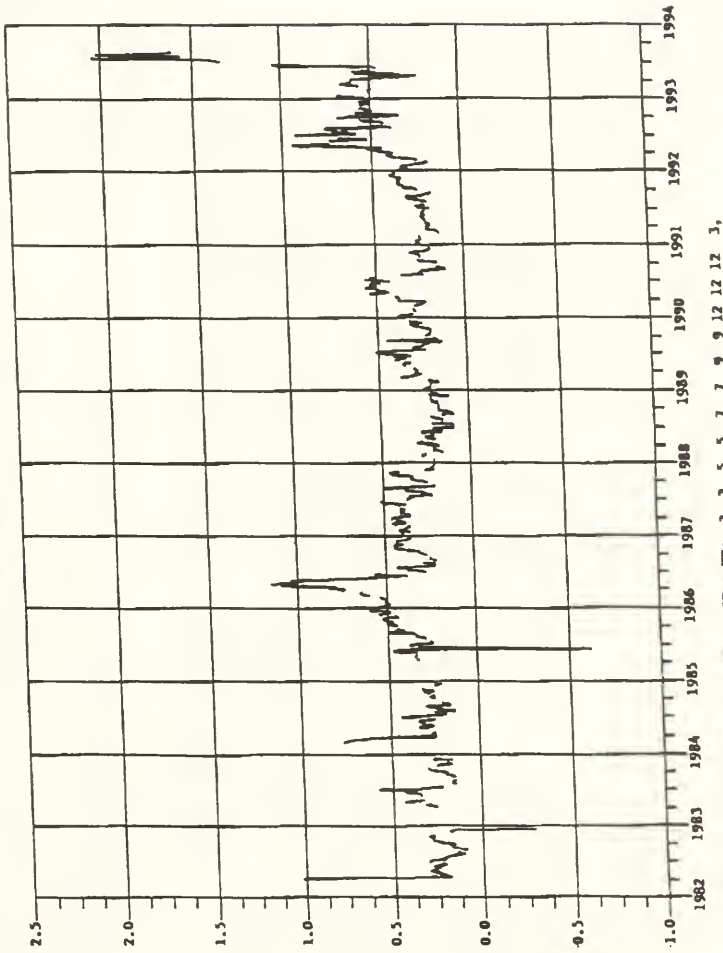
A=0, F=5, C=0, WTD ,DP=1,



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DULUTH WHEAT DSI 1.4% MINUS MINNEAPOLIS NEARBY WHEAT



A=0, Y=93, CSH=QTU, OP=1, FUT=96, OP=1, ED=3, 3 3 5 5 7 7 9 9 12 12 12 3,

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DOLLAR WHEAT DMS-1 144 MINUS MINNEAPOLIS MEANWET INDEX

	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993
JUN												
1	-	-	-	-	0.550	0.350	0.700	0.240	0.330	0.740	0.290	0.500
2	-	-	-	-	0.540	0.400	0.200	0.240	0.375	0.240	0.290	0.550
3	-	-	-	-	0.480	0.400	0.200	0.220	0.385	0.210	0.290	0.675
4	-	-	-	-	0.480	0.400	0.200	0.210	0.235	0.265	0.310	0.675
5	-	-	-	-	0.480	0.350	-	-	-	0.240	0.330	-
JUL												
1	-	-	-	-	0.500	0.410	0.270	0.210	0.275	0.230	0.210	0.502
2	-	-	-	-	0.500	0.380	0.270	0.100	0.285	0.250	0.240	0.500
3	-	-	-	-	0.500	0.380	0.270	0.160	0.290	0.240	0.195	0.500
4	-	-	-	-	0.530	0.350	0.250	0.220	0.290	0.235	0.235	0.485
5	-	-	-	-	-	-	-	-	-	-	-	-
AUG												
1	-	-	-	-	0.590	0.447	0.453	0.272	0.280	0.135	0.235	0.550
2	-	-	0.742	-	0.620	0.380	0.200	0.300	0.230	0.133	0.305	0.480
3	-	-	0.695	-	0.440	0.380	0.200	0.295	0.240	0.160	0.285	0.480
4	-	-	0.642	-	0.430	0.410	0.300	0.260	0.215	0.210	0.410	0.400
5	-	-	0.400	-	-	-	0.302	0.292	0.360	-	-	-
SEP												
1	1.015	-	0.240	0.320	0.730	0.450	0.170	0.245	0.370	0.200	0.370	0.400
2	1.000	0.350	0.250	-	0.780	0.400	0.200	0.240	0.240	0.195	0.425	0.375
3	0.860	0.310	0.270	0.320	0.770	0.350	0.250	0.300	0.390	0.145	0.480	0.445
4	0.810	0.280	0.250	0.330	1.048	0.350	0.260	0.290	0.370	0.219	0.520	0.230
5	0.200	-	-	-	-	0.400	-	-	-	-	0.435	-
OCT												
1	0.263	0.430	-	0.343	1.247	0.385	0.190	0.343	0.437	0.202	0.700	0.570
2	0.260	0.320	-	0.340	0.995	0.400	0.250	0.355	0.485	0.215	0.818	0.348
3	0.300	0.320	0.330	0.340	1.030	0.380	0.250	0.345	0.485	0.215	0.935	0.585
4	0.260	0.320	0.260	0.330	1.030	0.400	0.190	0.345	0.475	0.230	0.725	0.480
5	-	-	0.260	0.420	0.600	-	-	0.550	0.550	0.230	-	-
NOV												
1	0.240	0.340	0.308	0.460	0.500	0.380	0.155	0.400	0.500	0.215	0.725	0.450
2	0.240	0.340	0.320	0.460	0.490	0.380	0.220	0.340	0.530	0.220	0.615	0.488
3	0.240	0.400	0.340	-0.420	0.380	0.410	0.150	0.405	0.525	0.220	0.515	0.995
4	0.205	0.420	0.260	0.330	0.540	0.510	0.200	0.308	0.465	0.210	0.675	1.038
5	-	0.380	-	-	-	-	0.200	0.400	-	-	-	-

A=0.1-93, C=93, W=94, D=95, F=96, G=97, H=98, I=99, J=00, K=01, L=02, M=03, N=04, O=05, P=06, Q=07, R=08, S=09, T=10, U=11, V=12, W=13, X=14, Y=15, Z=16

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DULUTH WHEAT DIBS1 14% BETHEM HENRIE POLIC HARSST INTERT

		1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993
JULY	EXPT												
1		0.303	0.318	0.435	0.370	0.270	0.385	0.090	0.442	0.415	0.278	0.920	1.338
2		0.240	0.250	0.352	0.250	0.320	0.350	0.090	0.360	0.550	0.240	0.575	1.375
3		0.210	0.220	0.360	0.240	0.370	0.350	0.090	0.360	0.480	0.260	0.875	2.400
4		0.210	0.220	0.260	0.260	0.370	0.350	0.300	0.225	0.525	0.200	0.660	3.938
5		0.200	-	-	-	0.410	0.250	-	-	-	-	0.725	2.035
AUG	EXPT												
1		0.180	0.140	0.250	0.280	0.220	0.270	0.250	0.300	0.350	0.197	0.750	1.538
2		0.100	0.160	0.130	0.300	0.220	0.270	0.150	0.238	0.225	0.235	0.325	2.013
3		0.130	0.160	0.150	0.130	0.220	0.320	0.390	0.280	0.235	0.235	0.475	1.700
4		0.142	0.140	0.250	0.330	0.288	0.370	0.110	0.250	0.235	0.310	0.485	1.602
5		-	-	0.290	0.350	-	-	-	0.220	0.225	0.310	-	-
SEPT	DIB												
1		0.083	-	0.155	0.495	0.210	0.480	0.147	0.132	0.100	0.220	0.415	2.130
2		0.117	0.150	0.160	0.400	0.250	0.210	0.093	0.440	0.105	0.200	0.475	-
3		0.170	0.140	0.130	0.400	0.250	0.210	0.120	0.160	0.150	0.175	0.540	-
4		0.170	0.180	0.390	0.448	0.250	0.210	0.170	0.100	0.130	0.175	0.550	-
5		0.180	0.160	-	-	-	-	0.170	-	-	-	-	-
OCT	DIB												
1		0.150	0.200	-	0.440	0.260	0.250	0.170	0.215	0.145	0.250	0.675	-
2		0.100	0.240	0.240	0.440	0.300	0.300	0.170	0.200	0.150	0.215	0.575	-
3		0.230	0.280	0.278	0.470	0.360	0.340	0.170	0.195	0.250	0.310	0.575	-
4		0.280	0.290	0.380	0.470	0.398	0.320	-	-	0.280	0.275	0.500	-
5		-	-	-	-	-	-	-	-	-	-	-	-
NOV	DIB												
1		0.270	0.280	0.270	0.520	0.440	0.350	0.170	0.190	0.250	0.355	0.485	-
2		0.298	0.217	0.300	0.520	0.440	0.410	0.200	0.210	0.240	0.345	0.535	-
3		0.270	0.360	0.350	0.480	0.450	0.400	0.200	0.255	0.250	0.345	0.550	-
4		-	0.180	0.180	0.415	0.390	0.403	0.210	0.275	0.308	-	-	-
5		-	-	0.110	-	-	-	-	0.210	-	-	-	-
DEC	HAR												
1		0.181	0.160	-	0.560	0.422	0.252	0.105	0.240	0.200	0.330	0.545	-
2		0.148	0.262	0.240	0.480	0.440	0.200	0.215	0.270	0.190	0.400	0.550	-
3		-0.287	-	0.248	0.460	0.388	0.238	0.170	0.310	0.385	0.345	0.505	-
4		-	-	0.203	0.590	0.350	0.200	0.190	0.315	0.190	-	0.585	-
5		-	-	-	-	0.200	0.210	-	-	-	-	-	-

A=0.1+93,CHE=RTD, (DP=+ ,FUT=94 ,OP=-,MB= 3 3 5 5 7 7 9 9 12 12 12 3,


  
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# MINNESOTA MONTHLY PRICES RECEIVED BY FARMERS FOR CROPS

Year	CORN 1/ (Dollars per Bushel)											Market Year Average Price
	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	

ALL WHEAT 5/ (Dollars per Bushel)												
1983	3.41	3.41	3.63	3.81	3.91	3.94	3.83	3.79	3.82	3.83	3.80	3.83
1984	3.76	3.72	3.78	3.86	3.92	3.96	3.58	3.38	3.32	3.43	3.29	3.42
1985	3.19	3.30	3.37	3.49	3.45	3.36	2.78	2.78	2.92	3.01	3.24	3.00
1986	3.16	3.17	3.25	3.33	3.26	2.52	2.36	2.34	2.33	2.41	2.56	2.43
1987	2.56	2.60	2.59	2.55	2.41	2.35	2.23	2.41	2.58	2.58	2.59	2.51
1988	2.64	2.74	2.68	2.59	3.17	3.52	3.68	3.81	3.62	3.77	3.79	
1989	3.87	3.83	4.02	3.88	4.01	3.96	3.64	3.61	3.66	3.61	3.63	
1990	3.60	3.52	3.56	3.54	3.59	3.45	2.54	2.34	2.32	2.35	2.53	
1991	2.39	2.39	2.49	2.61	2.65	2.58	2.68	2.99	3.22	3.46	3.21	
1992	3.57	3.92	3.90	3.80	3.83	3.91	3.03	3.00	3.14	3.19	3.15	

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08/25/93 SPRING WHEAT  
PRICES RECEIVED BY FARMERS, NORTH DAKOTA  
OFFICIAL ESTIMATES  
- - - DOLLARS PER BUSHEL - - -

YEAR	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	MKTG YR AVERAGE 1/
1970	1.47	1.65	1.44	1.67	1.48	1.50	1.50	1.44	1.55	1.59	1.62	1.54	1.68
1971	1.53	1.52	1.47	1.66	1.43	1.44	1.35	1.23	1.23	1.28	1.30	1.33	1.30
1972	1.35	1.35	1.33	1.33	1.35	1.33	1.34	1.50	1.68	1.79	1.84	2.14	1.88
1973	2.10	1.89	1.93	2.01	2.06	2.38	2.49	4.24	4.27	3.91	3.95	4.53	4.28
1974	5.07	5.32	4.95	4.03	3.75	4.27	4.69	4.48	4.54	5.04	5.19	4.87	4.45
1975	4.39	4.12	3.97	4.03	3.87	3.69	4.10	4.25	4.36	4.27	3.84	3.66	4.05
1976	3.77	3.99	3.94	3.78	3.78	3.95	3.88	3.26	3.06	2.79	2.66	2.57	2.67
1977	2.59	2.65	2.62	2.49	2.42	2.25	2.14	2.10	2.27	2.34	2.47	2.41	2.40
1978	2.48	2.48	2.52	2.65	2.69	2.89	2.64	2.63	2.69	2.78	2.85	2.79	2.80
1979	2.74	2.72	2.78	2.78	3.05	3.67	3.56	3.54	3.61	3.67	3.56	3.53	3.61
1980	3.47	3.52	3.42	3.47	3.66	3.79	4.02	3.90	3.98	4.16	4.26	4.23	4.11
1981	4.26	4.16	4.10	4.22	4.24	4.10	3.97	3.64	3.55	3.57	3.70	3.55	3.63
1982	3.59	3.56	3.57	3.65	3.66	3.58	3.53	3.44	3.42	3.39	3.47	3.35	3.51
1983	3.34	3.30	3.52	3.76	3.77	3.77	3.74	3.74	3.65	3.64	3.61	3.44	3.71
1984	3.54	3.54	3.63	3.76	3.85	3.83	3.68	3.50	3.51	3.47	3.48	3.42	3.53
1985	3.49	3.49	3.49	3.57	3.56	3.53	3.34	3.09	3.16	3.34	3.49	3.56	3.34
1986	3.54	3.43	3.49	3.59	3.49	2.72	2.33	2.32	2.31	2.22	2.53	2.51	2.52
1987	2.68	2.68	2.64	2.62	2.79	2.54	2.43	2.44	2.57	2.64	2.67	2.73	2.80
1988	2.78	2.77	2.70	2.85	2.95	3.36	3.64	3.73	3.79	3.78	3.74	3.78	3.78
1989	3.87	3.86	3.96	3.89	3.92	3.79	3.82	3.62	3.49	3.50	3.48	3.53	3.50
1990	3.50	3.45	3.39	3.43	3.40	3.27	2.72	2.52	2.55	2.56	2.32	2.32	2.44
1991	2.32	2.36	2.44	2.52	2.57	2.51	2.42	2.48	2.67	2.94	3.17	3.32	3.14
1992	3.49	3.78	3.72	3.78	3.83	3.83	3.58	3.09	3.09	3.11	3.17	3.16	3.20
1993	3.21	3.28	3.26	3.26	3.15	3.18	3.53	3.65					

1/ PRIOR TO 1979 - SEASON AVERAGE PRICE, WHICH INCLUDED ALLOWANCES FOR LOANS OUTSTANDING AND GOVERNMENT PURCHASES.  
MARKETING YEAR AVERAGES DO NOT INCLUDE LOANS AND PURCHASES.

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